



**REGIONAL  
RAIL REVIVAL**

## **South Geelong to Waurn Ponds Duplication**

Invitation for Expression of Interest

Volume 1A – General Information & Response Requirements

Tender No. 27421

27 January 2021



Australian Government

**BUILDING OUR FUTURE**

**VICTORIA'S  
BIG BUILD**



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# IMPORTANT NOTICE

This Invitation for Expression of Interest (**Invitation for EOI**) must be reviewed in conjunction with the Terms and Conditions in Appendix B.

By submitting an EOI Response, a Respondent and each Member of a Respondent:

- agrees to comply with the Terms and Conditions; and
- must ensure compliance by its Associates with the Terms and Conditions.

Capitalised terms are defined in the glossary at Appendix A.

# 1. INTRODUCTION

## 1.1 THE OPPORTUNITY

This Invitation for EOI relates to the South Geelong to Waurn Ponds Duplication (the **Project**), which is the next stage of investment in the Geelong Line that will deliver major infrastructure upgrades between South Geelong and Waurn Ponds. The Project will deliver improved service frequency, reliability, and overall passenger experience on the Geelong Line through the delivery of the following scope:

- duplication of track between South Geelong and Waurn Ponds stations, including associated infrastructure and signalling upgrades;
- station precinct improvements at South Geelong and Marshall stations, including station facilities, access, amenities, station building upgrades, a new second platform, platform canopies and car parking; and
- grade separation of the level crossings at Surf Coast Highway and Fyans Street.

The Project will be delivered under an alliance delivery model.

The Project forms part of a broader investment in the Geelong Line, which is being delivered as a series of staged upgrades. The first stage of the Geelong Line investment includes the Waurn Ponds Station upgrade and Waurn Ponds stabling facility. These works have been procured by Rail Projects Victoria (**RPV**) as part of the Warrnambool Line Upgrade (**WLU**) contract, which was awarded to Downer EDI Works Pty Ltd (**Downer**) in December 2019.

The Project is the next major infrastructure commitment by the Commonwealth and Victorian governments along the Geelong Line and reflects the ongoing investment in critical infrastructure improvements in the Barwon South West region. The Project has a funding value of \$901.2 million<sup>1</sup>, which will be jointly funded by the Commonwealth and Victorian governments.

A summary of the Geelong Line investment, including the scope of the Project, is set out in Table 1-1.

**Table 1-1: Geelong Line investments**

Stages	Description
<b>Stage 1:</b> Waurn Ponds Station upgrade and Waurn Ponds stabling facility	The Waurn Ponds Station upgrade includes a second platform, new track and signalling works, an accessible pedestrian overpass, expanded forecourt and extra car parking. This will allow more services to be extended to and from Waurn Ponds. This stage also includes the Waurn Ponds stabling facility.  The Waurn Ponds Station upgrade and Waurn Ponds stabling facility are being delivered by RPV as part of the WLU contract.
<b>Stage 2:</b> South Geelong to Waurn Ponds Duplication (the focus of this Invitation for EOI)	The Project comprises track duplication and signalling works between South Geelong and Waurn Ponds, grade separations and station precinct improvements at South Geelong and Marshall stations. Further detail regarding the Project scope of works is provided in section 2.4.  The Project is the subject of this Invitation for EOI.
<b>Future stage(s):</b> Geelong to South Geelong Tunnel and other potential upgrades	Business case(s) will be prepared to address challenges associated with a tunnel between Geelong and South Geelong, expansion of Waurn Ponds stabling and other potential upgrades along the line.  Future stage(s) will include the following scope items, which were originally included as part of Stage 2 works: <ul style="list-style-type: none"><li>• New rail viaduct over Barwon River and Waurn Ponds Creek; and</li><li>• Replacement of the existing rail bridge over the Barwon River.</li></ul>

<sup>1</sup> Funded on an 80:20 basis by the Commonwealth and the Victorian governments, respectively.

RPV invites Pre-qualified Respondents who have the requisite experience, capability and capacity to deliver the Project to submit an EOI Response.

Further details on this opportunity is provided in section 2.

## 1.2 THE PURPOSE OF THE INVITATION FOR EOI

The purpose of this Invitation for EOI is to:

- invite Pre-qualified Respondents to submit EOI Responses;
- provide information to Pre-qualified Respondents about the Project to support development of EOI Responses;
- outline the Procurement Process and indicative timeframes;
- outline the EOI Mandatory Evaluation Criteria and EOI Comparative Evaluation Criteria (**EOI Evaluation Criteria**) against which RPV will evaluate each EOI Response and select Shortlisted Respondents; and
- seek information from the market to assist RPV's decision making on certain key issues to inform the Request for Proposal (**RFP**) Phase.

RPV notes the documents provided at the EOI Phase are based on the *National Alliance Contracting Guidelines* and precedent alliance projects.

## 1.3 PARTICIPANT CAPABILITY

The Non-Owner Participants (**NOPs**) engaged under the Project Alliance Agreement (**PAA**) to deliver the Project will demonstrate capability and capacity in respect of:

- effective management of major brownfield rail projects;
- experience working collaboratively with rail signalling technology providers or otherwise delivering complex signalling works;
- strong project management (including program and cost control) and construction management within an alliance context;
- access to sufficiently skilled and capable resources for extensive physical site works, including track, civil works, station works, signalling design, installation and commissioning management;
- expertise in stakeholder and community relations management;
- strong health, safety and environmental performance;
- program coordination, systems engineering and assurance, design integration and interface management; and
- managing occupations and disruption associated with the Works.

The constructor and design lead(s) are expected to be NOPs under the PAA.

## 1.4 PROCESS AND TIMELINES

The Procurement Process will involve the following key phases, designed to provide effective competition and deliver value for money outcomes.

### 1.4.1 PRE-QUALIFICATION PHASE

The Pre-qualification Phase commenced following the release of the Pre-qualification Document. The Pre-qualification Process is used to determine whether Interested Parties are bona fide potential Respondents in the Procurement Process. Interested Parties which have met the Pre-qualification Requirements will be notified they have become Pre-qualified Respondents and are eligible to:

- access the Electronic Data Room (**EDR**) which contains EOI Volume 1A (this document), Volume 1B (the Returnable Schedules) and other information that aims to support Pre-qualified Respondents' understanding of the Project; and
- lodge an EOI Response.

The Pre-qualification Phase will run in parallel with majority of the EOI Response period. RPV notes that it is in each Interested Party's best interests to pre-qualify promptly in order to allow the Pre-qualified Respondent to gain access to the EDR and lodge an EOI Response prior to the EOI Closing Time and Date.

## 1.4.2 EOI PHASE

The EOI Phase commences with the release of this Invitation for EOI and includes:

- preparation and submission of EOI Responses;
- evaluation of EOI Responses, including clarification process whereby RPV may seek clarification from Respondents to confirm aspects of the EOI Responses;
- workshops to agree positions on all material commercial and legal departures; and
- identification and notification of Shortlisted Respondents to be invited to participate in the RFP Phase.

The EOI process will be used to shortlist up to two Respondents that have the proven experience, capability and capacity to deliver the Project.

The EOI Phase ends upon selection of the Shortlisted Respondents. The Shortlisted Respondents will then each enter into a separate Alliance Development Agreement (**ADA**) with RPV prior to receiving the RFP.

## 1.4.3 RFP PHASE

The RFP Phase commences on the date of release of the RFP and will end upon execution of a PAA with the Successful Proponent (or as otherwise described in the RFP). To support an efficient RFP Phase that results in a value for money outcome for the State, RPV has identified an opportunity to optimise the RFP Phase from the traditional Alliance procurement approach to allow for more extensive engagement with the Preferred Proponent. The objective of the proposed optimised RFP process is to support more extensive collaboration between the Preferred Proponent, the State and key stakeholders, resulting in an Alliance that is best positioned for successful Project delivery.

The RFP Phase is expected to involve two sub-phases, comprising:

- sub-phase one (**Project Proposal sub-phase**) – up to two Shortlisted Respondents will participate in a competitive Interactive Process to develop a detailed and binding proposal (Project Proposal) for the Project. RPV will assess the Project Proposals against the RFP Evaluation Criteria and may select a Preferred Proponent to participate in sub-phase two of the RFP Phase. In evaluating Project Proposals, it will be open to RPV to determine which outcome provides the best value for money to the State; and
- sub-phase two (**Preferred Project Proposal sub-phase**) – if selected, the Preferred Proponent will further develop their Project Proposal collaboratively with RPV and key stakeholders, resulting in the submission of a final, fully costed, detailed and binding proposal (Preferred Project Proposal).

Each Shortlisted Respondent will be required to execute an ADA, which will cover both sub-phases, prior to commencement of the RFP Phase.

While more extensive engagement with the Preferred Proponent is proposed, the total duration of the RFP Phase is not intended to be materially impacted by this optimised process. Any additional engagement with the Preferred Proponent is intended to be made possible through efficiencies realised during the Project Proposal sub-phase.

If, following assessment of the Preferred Project Proposal, RPV considers that it does not represent value for money to the State, RPV may engage with the other Shortlisted Respondent to agree on the final PAA and associated contract documentation.

RPV continues to finalise the specific program, staging and deliverables of the optimised RFP Phase for the Project. RPV reserves the right, in its absolute discretion, to amend the RFP Phase process and deliverables at any time.

References in this EOI to requirements of or documents to be provided at the RFP Phase may refer to either or both of the Project Proposal sub-phase or the Preferred Project Proposal sub-phase of the RFP. Further information in relation to the RFP Phase will be provided prior to the RFP Phase.

#### 1.4.4 TIMELINES

Indicative key dates relating to the Procurement Process are presented in Table 1-2.

**Table 1-2: Indicative timeline for Procurement Process**

<b>Procurement and delivery key milestones</b>	<b>Target Date*</b>
<b>Pre-qualification Phase</b>	
Advance Tender Notice published	22 December 2020
Release of Pre-qualification Document	4 January 2020
Closing date to submit Pre-qualification Response	18 February 2021
<b>EOI Phase</b>	
Release of Invitation for EOI	27 January 2021
Pre-qualified Respondent clarification workshop	Early February 2021
Clarification Closing Time and Date	25 February 2021, 5.00pm AEDT
EOI Closing Time and Date	11 March 2021, 5.00pm AEDT
Commercial and legal workshops	March 2021
<b>RFP Phase</b>	
Release of RFP	Q2 2021
Interactive workshops and clarifications process with Shortlisted Respondents	Q2 2021 – Q3 2021
Project Proposals due	Q3 2021
Interactive workshops and clarification process with Preferred Proponent	Q3 2021 – Q4 2021
Preferred Project Proposal due	Q4 2021
Execute the PAA	Q1 2022
<b>Delivery phase</b>	
Construction phase	Q2 2022 – Q4 2024

\* *Target dates are subject to applicable government, planning and environmental approvals.*

RPV reserves the right, at its absolute discretion, to amend this timetable at any stage.

## 2. SOUTH GEELONG TO WAURN PONDS DUPLICATION

### 2.1 OVERVIEW

The Geelong Line is operated and maintained by V/Line as part of the regional Victorian rail network. The Geelong Line provides frequent daily passenger services between Melbourne and Waurn Ponds, with some services extending as far as Warrnambool.

The Geelong Line is the busiest regional rail line in Victoria and is under significant patronage pressure. Patronage on regional trains has grown by an average of 139 per cent since 2003-04 with growth of 242 per cent in the Barwon South West region (which includes Geelong, South Geelong and Waurn Ponds), and patronage is expected to double over the next 10 years.

The Project forms part of a broader investment in the Geelong Line, which is delivering a staged upgrade of the Geelong Line. The Project comprises of track, civil and signalling upgrades between South Geelong and Waurn Ponds (the **Works**), and will deliver improved service frequency, reliability and overall passenger experience. Specifically, the Project will provide an improvement to the current service frequency at South Geelong, Marshall and Waurn Ponds.

Increasing the resilience, frequency and supporting the reliability of V/Line services on the Geelong Line will improve connectivity between the Barwon South West region and Melbourne, other regional centres and regional communities. Better connectivity throughout the Barwon South West region will improve this region as a place to live, work and visit by allowing new and existing residents to capitalise on economic benefits.

Further detail regarding the Project scope of works is provided in section 2.4. Further detail regarding project scope and technical requirements will be available during the RFP Phase.

### 2.2 ALLIANCE OBJECTIVES

The Alliance Objectives that have been developed to support the successful delivery of the Project are as follows:

- **Value for money:** To ensure a cost-effective solution in relation to the design and delivery of all the Works that achieves optimum value for money outcomes for the State.
- **Safety:** To ensure safety is fundamental in the delivery and operation of the Works, and to support the broader regional network operations.
- **Time:** To procure and deliver the Works in accordance with specified milestone dates to facilitate the achievement of the Project program.
- **Disruption:** To perform the Works in a manner that minimises disruption to transport networks, businesses and the broader community.
- **Stakeholders:** To deliver the Works to support positive and inclusive relationships with stakeholders and the community.
- **Sustainability and Environment:** To meet the social, environmental and economic objectives of RPV's Environmental Policy and Sustainability Policy.
- **State and Commonwealth Requirements:** To procure and deliver the Works in accordance with the State and Commonwealth's workforce development policies.

## 2.3 PROJECT OBJECTIVES

The Project is seeking to address the significant demand pressure on the Geelong Line and meet a range of project-specific objectives (**Project Objectives**), including to:

- enable more consistent service patterns at South Geelong, Marshall and Waurn Ponds;
- enable an increase in peak-period/peak-direction (five trains per hour) and interpeak services between Waurn Ponds and Geelong;
- support the achievement of the ultimate service plan (six trains per hour peak period/peak direction) by providing infrastructure improvement between Geelong and Waurn Ponds;
- preserve existing, and facilitate the operation of, future freight services, as required on the Geelong Line;
- facilitate an adequate level of rail access to a future train stabling and light maintenance facility to be located west of Waurn Ponds; and
- upgrade the user experience and passenger amenity at Marshall and South Geelong station precincts.

## 2.4 SCOPE OF WORKS

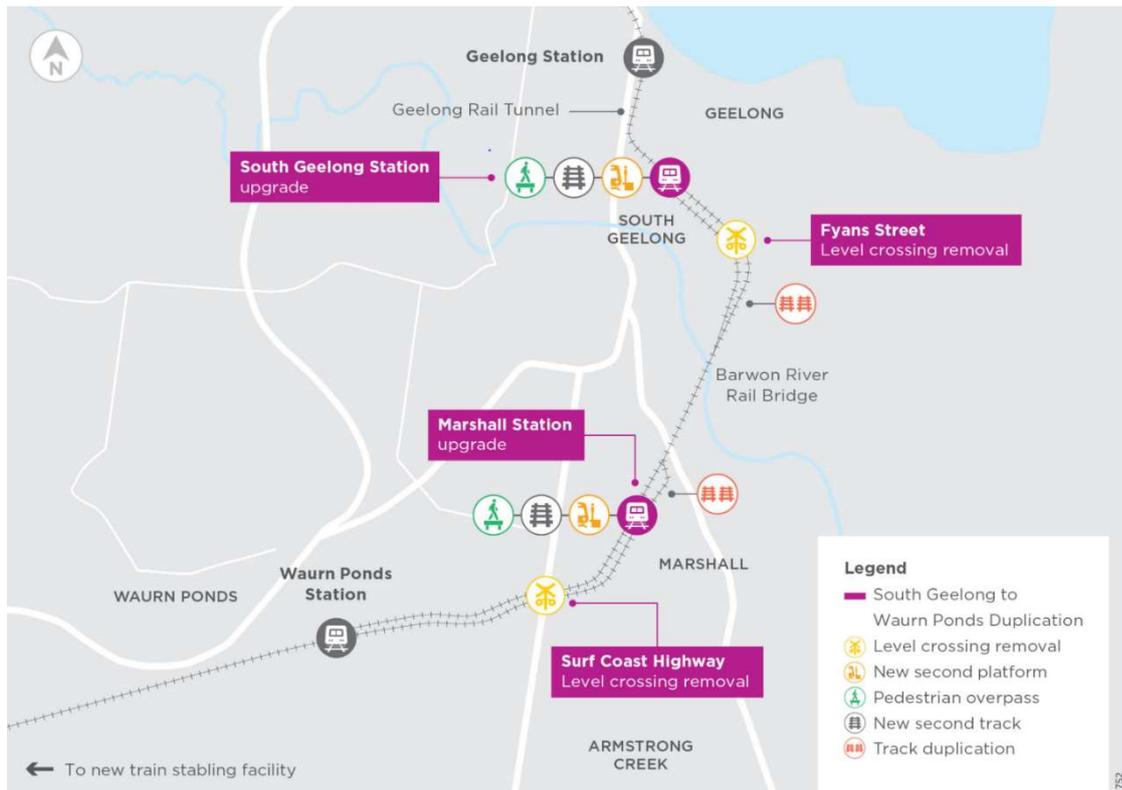
A high-level summary of the Project scope of works is presented in this section. This scope summary is subject to ongoing technical due diligence by RPV and is therefore subject to change. Further details will be provided at the RFP Phase.

The Project scope of works comprises:

- duplication of track between South Geelong and Waurn Ponds, including associated infrastructure and signalling upgrades (excluding over the Barwon Bridge and Waurn Ponds Creek);
- alterations to interfacing signalling and train control systems;
- station precinct improvements at South Geelong and Marshall stations, including station facilities, access, amenities, station building upgrades, a new second platform, platform canopies and car parking; and
- grade separation of the level crossings at Surf Coast Highway and Fyans Street.

The Project scope of works is provided pictorially on the following page in Figure 2–1.

**Figure 2–1: The Project scope of Works**



## 2.4.1 TRACK DUPLICATION AND ASSOCIATED INFRASTRUCTURE

The track works will duplicate sections of the existing alignment of single bi-directional track between South Geelong and Waurnd Ponds. The works will also include new turnouts and associated signalling.

The horizontal alignment for the track duplication will follow alongside the existing track alignment and will utilise any existing infrastructure insofar as is possible. The duplicated track will remain within the existing VicTrack boundary between South Geelong and Waurnd Ponds.

## 2.4.2 SIGNALLING

The scope of the signalling works includes upgrades to:

- interlockings and object controllers, including the associated hardware, software and data components;
- train protection and warning systems, including the associated trackside components;
- train control systems, including alterations to affected train control systems;
- trackside equipment and other components, including track circuits, axle counters, point machines, signals, relays, level crossing and power supply equipment; and
- technology, data components or software related to any of the above.

Further information in relation to the procurement approach and existing signalling and Train Control System (TCS) technologies are detailed in section 2.7.

### 2.4.3 STATION PRECINCT IMPROVEMENTS AND SECOND PLATFORM

Station precinct works will improve function and customer experience at South Geelong and Marshall stations. These works will need to be designed to integrate with the existing infrastructure and deliver improvements in functional layout and sustainability of the station precincts. The works include:

- upgrades to station facilities and associated operational control systems;
- improved access and amenity;
- car parking;
- pedestrian overpasses;
- station buildings; and
- construction of new second platforms with platform canopies.

### 2.4.4 GRADE SEPARATIONS

There are two rail over road level crossing grade separations at:

- Fyans Street and Wood Street located between South Geelong and Marshall stations; and
- Surf Coast Highway located between Marshall Station and Waurin Ponds Stations.

## 2.5 ADDITIONAL SCOPE

### 2.5.1 POTENTIAL ADDITIONAL SCOPE

The Victorian Government is continually evaluating the State's infrastructure priorities and additional scope may be required to be delivered as part of the Project (or otherwise) under the PAA.

During the RFP Phase, Shortlisted Respondents may be requested to include additional scope in their Project Proposal. Alternatively, the Alliance may be required to prepare an additional scope proposal or scope variation report under the PAA during the delivery phase. The additional scope may include:

- new rail viaduct over Barwon River and Waurin Ponds Creek;
- replacement of the existing rail bridge over the Barwon River; and/or
- other additional scope items along the Geelong and Warrnambool rail corridors, such as new stations, station upgrades, platform extensions, signalling improvements, civil works, level crossings, crossing loops, track works and stabling.

The addition of this scope may depend on a range of factors, including timing requirements, funding considerations, the State's preferred delivery model and the performance of the Alliance. Further information will be provided at the RFP Phase, as applicable.

### 2.5.2 SUPPORTING MECHANISMS

Mechanisms have been included in the draft PAA to be ready to facilitate the procurement of additional scope during the delivery phase. These include:

- **Preliminary Development Work** – a mechanism that facilitates the Alliance being engaged to deliver early stage and long-lead work in respect of potential additional scope (such as concept designs, options analysis, resource planning, programming and other similar preliminary work);
- **New Scope Proposal Process** – a mechanism setting out a standard default approach to:
  - requesting, preparing and evaluating proposals for additional scope under the PAA; and
  - (if applicable) awarding the additional scope and contractually documenting the agreed approach; and
- **Early Works** – a mechanism that facilitates the delivery of early works in respect of additional scope, alongside a corresponding New Scope Proposal Process.

## 2.6 DESIGN APPROACH

RPV, in conjunction with V/Line and RPV's technical advisers, has identified various design options for the Project. RPV will provide a reference design during the RFP Phase that aims to demonstrate the functional requirements of the Project.

The Alliance will be required to develop designs in accordance with relevant standards and the Project Scope and Technical Requirements (**PS&TR**), having regard to the Project Objectives, RPV's design management processes and V/Line's design management procedure (to enable V/Line to vary its accreditation in line with its safety management system). Key design activities and deliverables include:

- design management plan;
- competency framework;
- design deliverables schedule;
- Safety in Design (SiD);
- hazard assessment of each level crossing;
- design comments registers;
- requests for type approval and derogations to standards;
- design reports and drawings;
- human factors assessment;
- RAMS assessment; and
- requirements compliance.

## 2.7 SIGNALLING AND TRAIN CONTROL SYSTEMS APPROACH

RPV will develop signalling scheme plans for the Project and will seek V/Line's review of the signalling scheme plans in advance of the RFP Phase.

A summary of the existing signalling and TCS systems, as well as the proposed signalling and TCS approach for the Project, are detailed in the following sections.

### 2.7.1 SIGNALLING

RPV is cognisant of the incumbency of the existing signalling technologies as well as broader structural conditions in the rail signalling market, and the impact these factors may have on consortium formation, competition and ultimately Government's ability to optimise value for money.

In light of the above, Pre-qualified Respondents (during the EOI Phase) and Shortlisted Respondents (during the RFP Phase) are required to identify or include signalling technology suppliers, designers, installers and/or integrators in their EOI Response and each Proposal, respectively.

For the purpose of this Invitation for EOI, a '**Signalling Technology Supplier**' is a supplier and/or licensor of any of the following:

- interlockings and object controllers, including the associated hardware, software and data components;
- train protection and warning systems, including the associated on-board and trackside components;
- operational control systems;
- TCS;
- trackside equipment and other components, including track circuits, axle counters, point machines, signals, relays and level crossing equipment; and/or
- technology, data components or software related to any of the above,

### (Signalling Equipment).

Pre-qualified Respondents and Shortlisted Respondents must not enter into exclusive arrangements or agreements (in whole or in part) with any Signalling Technology Suppliers in relation to the supply and/or licensing of Signalling Equipment, including as part of a broader supply or consortium arrangement or agreement. An exclusive arrangement or agreement would, for example, include an arrangement or agreement which in any way restricts, prohibits or adversely affects the ability of a Signalling Technology Supplier to supply or license any Signalling Equipment to, or contract with, a Competing Respondent (or which causes or could cause any adverse consequences on the Signalling Technology Supplier for doing so).

Shortlisted Respondents are required to engage with Signalling Technology Suppliers on a commercial arms-length basis during the RFP Phase to secure pricing for the Signalling Equipment components of their Proposals. Signalling Technology Suppliers are not discouraged from aligning with a Respondent, provided the alignment, agreement or arrangement is not exclusive and does not make their Signalling Equipment exclusive to one Respondent only.

Respondents may be required to provide information to RPV during the EOI Phase regarding their arrangements in relation to Signalling Technology Suppliers and the personnel involved in such arrangements, as requested.

For context, the existing interlocking signalling technologies on the Geelong Line are summarised in Table 2-1

**Table 2-1 Existing interlocking signalling technologies**

Location	Technology	Delivered by	Manufacturer
Geelong	SSI	UGL	UGL
Waurm Ponds	ElectroLogIXS	Downer	Alstom

## 2.7.2 TRAIN CONTROL SYSTEMS

The TCS to be deployed on the South Geelong to Waurm Ponds section will need to be a V/Line type approved or Regional Rail Link Train Control Systems (**RRLTCS**) equivalent system. Currently, United Group Limited (**UGL**) is the only type-approved supplier of the RRLTCS. RRLTCS is currently in service between Geelong and Melbourne. The TCS between Waurm Ponds to Warrnambool is currently being upgraded to a NIST-012.4 and NOMG-143 compliant system as part of the WLU project. It is not yet confirmed if the WLU project TCS will be supplied by UGL or another supplier.

The existing TCSs on the on the Geelong Line are summarised in Table 2-2 and the expected TCS arrangement on the Geelong and Warrnambool Lines following the completion of the WLU project is summarised in Table 2-3.

**Table 2-2 Existing train control systems**

Location	Supplier	Technology
Melbourne (Southern Cross) to Geelong	UGL	RRLTCS
South Geelong	UGL	Standalone Sigview (indication only)
Marshall to Waurm Ponds	UGL	Standalone Sigview (indication and control)
Waurm Ponds to Warrnambool	None – dark territory	

**Table 2-3 Train control systems following completion of the WLU project**

Location	Supplier	Technology
Melbourne (Southern Cross) to Geelong	UGL	RRLTCS
South Geelong	Not yet known	NIST-012.4 and NOMG-143 compliant system (indication only)
Waurin Ponds to Warrnambool	Not yet known	NIST-012.4 and NOMG-143 compliant system

The procurement approach for the TCS is as per section 2.7.1. Further information in relation to the procurement of the TCS scope will be provided at the RFP Phase.

## 2.8 SYSTEMS ASSURANCE

RPV employs a systems engineering and assurance program which aligns with Department of Transport's (DoT) network integrity assurance model and V/Line's safety management system. The program aims to provide assurance against client and stakeholder requirements, and to ensure public transport network integrity throughout the system lifecycle processes across all projects within RPV's delivery portfolio.

The Alliance will be required to employ a system engineering and progressive assurance approach through design, construction, testing, commissioning and delivery of the Works in accordance with relevant standards and the PS&TR. The approach will need to give due consideration to V/Line processes, enabling it to vary its accreditation in line with its safety management system and regulatory requirements.

Key assurance activities and deliverables include:

- System Engineering Management Plan;
- System Assurance Management Plan;
- Assurance gate reviews;
- Requirements Management and Verification and Validation;
- Interface identification, analysis and management;
- Systems safety management;
- Hazard Analysis and Hazard Log management and closeout;
- RAM analysis and RAM Log;
- Human Factors analysis and Human Factors Issues Log; and
- Assurance Case Report.

## 2.9 COMPLETION AND HANDOVER REQUIREMENTS

RPV operates on a 'completions-from-the-start' basis. Completions and handover are expected to be managed and delivered progressively throughout the Works, and not simply commenced once construction is complete. There is a range of different activities and deliverables the Alliance will be required to deliver. Some of the key activities and deliverables that are required as part of completion and handover include:

- As Built drawings (including upload to PTV's drawing management system);
- operations and maintenance documentation (e.g. service schedules, operations and maintenance manuals, technical maintenance plans);
- training (e.g. driver, maintainer);
- timely provision of asset registers and other information to enable asset transfer to final asset owner (including PASS Assets);
- warranties and guarantees; and
- compliance certificates.

## 2.10 KEY INTERFACES

The Alliance will have several key interfaces to manage to ensure the successful delivery of the Project. It is likely that there will be interfaces between the Project and other Related State Projects, as outlined in section 2.11. In addition, the Alliance will be required to interface with a number of the key stakeholder groups identified in section 2.16, notably including the following:

- **Communities** – the Alliance will be required to manage communication and engagement activities with local residents, businesses and other relevant community stakeholders (as described in section 2.16) located along the affected rail corridor. Further, the Alliance will be required to consult with local communities for any local sourcing and employment opportunities in accordance with State requirements (as described in section 7.1);
- **Rail operators** – V/Line is the Rail Transport Operator (**RTO**) to whom the new track and associated infrastructure will be leased. V/Line will be a Participant in the Alliance and will require close engagement during design, delivery, commissioning and handback of the Works, including rectification of defects;
- **VicTrack** – the Alliance will be required to liaise with VicTrack throughout the Project, particularly regarding any impacts to VicTrack land or assets;
- **Major Road Projects Victoria (MRPV)** – the Project has an interface with the Barwon Heads Road Duplication Project being delivered by MRPV. At this stage, MRPV will retain possession of the site area until the works are completed in late 2023. Therefore, it is critical that the Alliance engage with MRPV (and the appointed contractor) to ensure design and physical interfaces can be appropriately managed and mitigated;
- **Local councils** – consultation with relevant local councils in the Barwon South West region will be required throughout the Project in conjunction with RPV;
- **Road network** – the construction methodology for the Project must consider impacts to the road network. Approval from VicRoads and the coordinating road authority (as relevant) must be obtained as required for transportation of materials and any impacts to the local and surrounding road networks. The rail design must not preclude future improvement works of surrounding roads;
- **Industry Capability Network (ICN) and Regional Development Victoria (RDV)** – the Alliance will need to ensure that the Project supports local industry and local jobs in the regions, in liaison with ICN, GROW and RDV;
- **Authorities** – active engagement with relevant authorities will be required to ensure any required approvals are obtained in a timely manner;
- **Aboriginal Cultural Heritage** – engagement with relevant Registered Aboriginal Parties (**RAPs**) and Aboriginal Victoria to ensure required approvals are obtained in a timely manner; and
- **Historical Heritage** – engagement with Heritage Victoria to ensure required approvals are obtained in a timely manner.

## 2.11 RELATED STATE PROJECTS

The Commonwealth and Victorian governments are investing significantly in the Barwon South West region through a range of major road and rail projects. The extent of investment is demonstrated by the number of committed projects being planned and delivered in the region. Consideration should be given to these projects as they may interface with the Project and impact upon the project design and delivery program and approach.

A summary of the Related State Projects is provided in Table 2-4. Further information in relation to key project interfaces will be provided at the RFP Phase.

Table 2-4: Related State Projects

Title	Description	Relative Timing
<b>Precursor interfacing projects</b>		
<p>Warrnambool Line Upgrade (incl. Waurm Ponds Station upgrade and Waurm Ponds Stabling facility)</p>	<p>The WLU project involves delivery of 12 level crossing upgrades, signalling upgrades between Waurm Ponds and Warrnambool and a crossing loop at Boorcan. Waurm Ponds Station is being upgraded to include a new second platform and track, an accessible overpass, expanded forecourt and more car parking. The WLU project will also deliver a Waurm Ponds stabling facility.</p> <p>The 12 level crossing upgrades were completed by V/Line in 2020. RPV has procured the balance of the above scope as part of a D&amp;C contract that was awarded to Downer in late 2019. Construction commenced in mid-2020 and completion is expected in late 2021. Therefore, construction is planned to be completed prior to the commencement of Project construction works and thus is unlikely to be a construction interface with this Project.</p> <p>In the event that these works are not fully complete prior to commencement of the Project delivery phase, the Alliance will be responsible for engaging with Downer and ensuring any potential interfaces are appropriately managed.</p>	<p>Precursor</p>
<b>Concurrent interfacing project</b>		
<p>Barwon Heads Road Duplication</p>	<p>The Barwon Heads Road Duplication being delivered by MRPV involves the duplication of 4km of Barwon Heads Road between Settlement Road in South Geelong and Reserve Road in Marshall. This project will also provide a road over rail grade separated solution at Barwon Heads Road. The project is currently in the concept design phase and has an expected completion date of late 2023. Therefore, it is likely these works will be delivered concurrently and will interface where Barwon Heads Road intersects with the rail line.</p> <p>In this regard, the Alliance will need to consider appropriate staging of construction works when developing its delivery program strategy to mitigate any potential physical interfaces. In addition, the Alliance may be required to enter into an Interface Agreement with the appointed contractor. RPV is currently engaging with MRPV in relation to this interface and will provide further information during the RFP Phase.</p> <p>The Australian Government has committed \$292 million towards the project as part of the 2020-21 Federal Budget.</p>	<p>Concurrent</p>
<p>Warrnambool Line Upgrade Stage 2</p>	<p>Stage 2 will include level crossing and stabling upgrades to enable Warrnambool services to be operated by VLocity trains.</p> <p>The Australian and Victorian Governments have committed \$260 million towards the project as part of the 2020-21 Federal Budget and the 2020-21 State Budget.</p> <p>The project is in the planning phase, with the procurement approach and construction timeframes to be determined.</p>	<p>Concurrent</p>
<p>Geelong Fast Rail</p>	<p>The Australian and Victorian Governments have each committed \$2 billion for stage one of the Geelong Fast Rail project, which will enable faster services between Geelong and Melbourne, with a journey time of around 50 minutes.</p> <p>Construction of Geelong Fast Rail is expected to commence in 2023, subject to relevant planning, environmental and government approvals.</p>	<p>Concurrent</p>
<b>Committed projects with a known interface in the future</b>		
<p>Geelong Line Upgrade Stage 3: Geelong to South Geelong</p>	<p>The Stage 3 Geelong to South Geelong Tunnel comprises the duplication of the tunnel between Geelong and South Geelong stations. Stage 3 now also includes the replacement and duplication of the Barwon River Bridge, which</p>	<p>Subsequent</p>

Title	Description	Relative Timing
Tunnel and other works previously Stage 2	was deferred from Stage 2. This project will be crucial to delivering the full operational benefits of the Waurm Ponds Station upgrade and the Project. Whilst the exact delivery timing of this project is not yet known, it is anticipated that there will be a number of key design (e.g. tunnel options to ensure appropriate integration with the Project works) and physical interfaces between the projects that will need to be considered. It is essential that any design solution minimises or eliminates any redundant works arising from the delivery of Stage 3.	
<b>Other potential interfaces</b>		
Bellarine Link Planning Study	The Bellarine Link will connect the Geelong Ring Road through Baanip Boulevard / Surf Coast Highway and Portarlington Road. The project is currently in the planning phase and there are no committed timeframes for the delivery of works.	Not yet known
Armstrong Creek Transit corridor	The Armstrong Creek Transit corridor runs between Marshall Station and the proposed Armstrong Creek town centre. The next stage involves preparation of a feasibility study, planning and land acquisition. If this project were to be funded and delivered around the time of the Project, there would be potential interface at Marshall Station.	Not yet known

## 2.12 OPERATION AND MAINTENANCE

As the Alliance will not function beyond the completion of the Works under the PAA and the expiry of the defects liability period, ongoing maintenance requirements associated with assets returned to the State will be managed by V/Line. Depending on the staging of the delivery program, some assets may require scheduled and unscheduled maintenance during the delivery phase.

## 2.13 LAND, PLANNING AND ENVIRONMENT

### 2.13.1 LAND

The successful delivery of the Project may require the acquisition or temporary occupation of interests in public and private land. RPV, as the Owner Participant, will manage the land acquisition or occupation process, and will progress such processes before award of the PAA. Establishing the land arrangements necessary to deliver the Project will be a shared risk within the Alliance. The Alliance will be expected to provide RPV with assistance in order to facilitate the seamless acquisition or occupation of land if required.

### 2.13.2 PLANNING AND ENVIRONMENT

The Alliance will be required to deliver the Project in accordance with the objectives set out in the RPV Environmental Vision and to deliver the Project in accordance with best practice to ensure reduced environmental and community impacts.

The RPV Environmental Vision is: *“To be an industry leader in managing the environmental impacts of delivering major infrastructure projects.”*

RPV is committed to delivering the Project to an industry leading standard in the field of environmental management.

### 2.13.3 ENVIRONMENTAL AND ENVIRONMENT FRAMEWORK

The Environmental Management Framework (**EMF**) will be developed by RPV in consultation with relevant stakeholders and regulatory bodies. The EMF will provide a transparent and integrated governance framework to manage the planning, environmental, heritage, sustainability and land aspects of the Project, including clear accountabilities for delivery, monitoring and auditing. The approach to the EMF will be outlined in the approvals strategy being prepared by RPV.

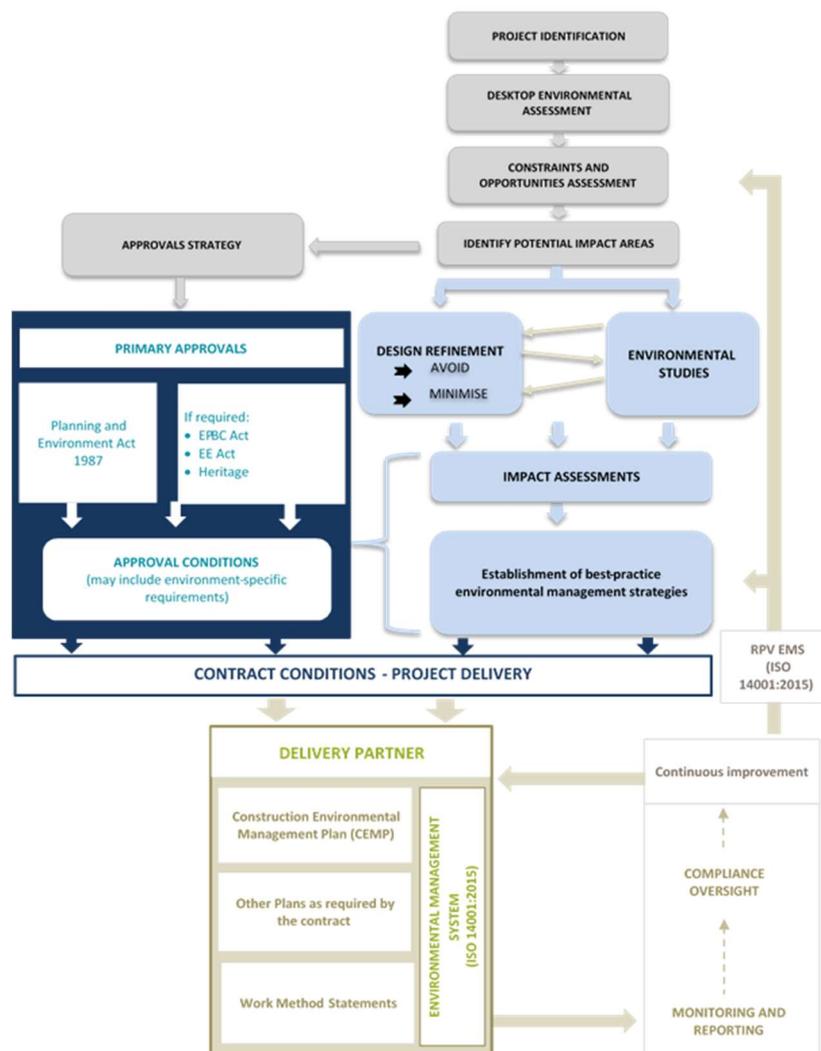
The EMF will include a number of Environmental Management Requirements (**EMRs**) or Environmental Performance Requirements (**EPRs**), being a suite of performance-based standards/outcomes that apply to the design and construction for the Project.

The key objectives of the EMF and corresponding EMRs or EPRs are to:

- increase certainty that key environmental risks are identified and meaningfully considered early in project planning and throughout project delivery;
- set out the expected performance-based outcomes that must be achieved during design and construction and encourage innovation by the Alliance to achieve them;
- ensure potential environmental impacts are appropriately managed in a consistent manner across the Project and acceptable environmental outcomes are achieved; and
- minimise project delivery, approval, environmental and reputational risks.

Figure 2–2 illustrates the EMF that will support the RPV’s environmental and planning activities.

Figure 2–2: RPV Environmental Management Framework



## 2.13.4 ENVIRONMENTAL MANAGEMENT SYSTEM

The Successful Proponent will be required to develop and implement an ISO 14001:2015 accredited Environmental Management System (**EMS**) and prepare and implement a Construction Environmental Management Plan (**CEMP**) that outlines how environmental impacts will be managed across the Project. The purpose of the EMS is to ensure there are appropriate systems in place to ensure works are planned and performed so any adverse effects on the environment are avoided or minimised, and carried out in accordance with relevant legislation, policy, guidelines and authorisations.

Where the Successful Proponent already operates with an accredited EMS, the EMF will require the EMS to be applied and modified if required, for the delivery of the Works. The EMS will provide a structured approach for monitoring the implementation of CEMPs and other plans required to comply with the EMF for the Project. The Successful Proponent's compliance with the EMS, CEMPs and EMF will be audited throughout project delivery to inform continuous improvement.

## 2.13.5 PERMITS AND AUTHORISATIONS

RPV is currently developing an approvals strategy for the Project that will provide a clear pathway for the approvals required for the construction of the Works, based on the reference designs. It is anticipated the approvals set out in Table 2-5 may be required for the construction of the Works.

RPV will take primary carriage of the work to procure certain primary planning and environmental approvals (Primary Authorisations) to deliver the Project. Some of this work may be finalised prior to award of the PAA. Where that work continues under the PAA, the Alliance will be required to support RPV in carrying out that work as the Owner Participant.

The current proposed Primary Authorisations are set out in Table 2-5, with the approach to be finalised in the PAA. Note that the Primary Authorisations may be procured for stages or segments for the Project as appropriate.

Other than as described above, shared responsibilities within the Alliance will include:

- compliance with all Authorisations, including the specifications and conditions of the Primary Authorisations;
- any requirement to obtain secondary consents or approvals in relation to the Primary Authorisations and/or as otherwise required for the Works; and
- any requirement to obtain an amendment to a Primary Authorisation in respect of works proposed by the Alliance outside the scope of works or site to which the Primary Authorisation relates.

**Table 2-5: Anticipated Primary Authorisations**

Authorisation	Purpose	To be obtained by
<i>Aboriginal Heritage Act 2006 (Vic) and Aboriginal Heritage Regulations 2018 (Vic)</i>	These Acts provide for the protection of Aboriginal cultural heritage in Victoria.	RPV will seek any primary consents required for project delivery, including approval of any Cultural Heritage Management Plan.
<i>Heritage Act 2017</i>	This Act provides for the protection and conservation of places and objects of cultural heritage significance.	The Alliance will seek any permits or consents required under this Act, with facilitation from RPV.
<i>Planning and Environment Act 1987 (Vic)</i>	The Act provides a framework for the use and development of land in Victoria. The Project will require planning approval under the relevant planning schemes established pursuant to the Act. The approach to obtaining planning approval will be detailed in the Project approvals strategy. At this stage, RPV intends to request that the Minister for	Subject to the recommendations in the approvals strategy, RPV intends to seek planning approval in the form of an incorporated document. RPV intends to prepare and submit any EMF in accordance with the requirements of any incorporated document. RPV will prepare and submit any offset statement required under the terms of any incorporated document.

Authorisation	Purpose	To be obtained by
	Planning prepare, adopt and approve a planning scheme amendment to facilitate the Works.	The Successful Proponent will be responsible for securing any offsets in accordance with the offset statement.
<i>Environment Effects Act 1978 (Vic)</i>	This Act provides for the preparation of an Environment Effects Statement ( <b>EES</b> ) in relation to proposed projects or works which could potentially have a significant effect on the environment.	RPV is currently in the process of preparing a self-assessment in relation to the need to prepare an EES under the requirements of the Act.
<i>Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act)</i>	The EPBC Act relates to actions likely to have a significant impact on matters of national environmental significance.	RPV will prepare any referral under the EPBC Act and obtain any necessary primary consent under that Act, if needed, with technical and design input from the Successful Proponent.

## 2.14 SUSTAINABILITY

### 2.14.1 SUSTAINABILITY APPROACH

RPV has an endorsed Sustainability Policy and Sustainability Framework. These documents provide the overarching direction for incorporating sustainability across RPV projects and enable the realisation of meaningful sustainability outcomes

RPV's Sustainability Vision states:

*'Through our delivery of Major Projects, we're committed to connecting communities in the healthiest, most sustainable way possible. We'll help to ensure a lasting legacy for present and future generations for a more liveable Victoria – environmentally, socially and economically.'*

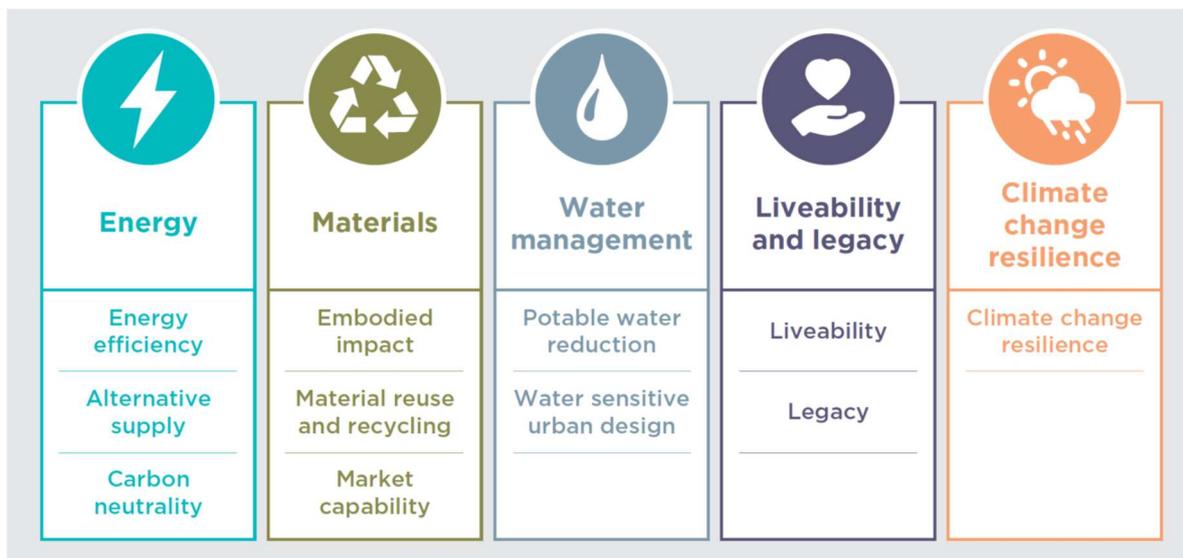
### 2.14.2 SUSTAINABILITY OUTCOMES – FOCUS AREAS

Each pillar of sustainability – economic, social and environment – is supported by focus areas. RPV sustainability focus areas have been identified as areas of core business where measurable outcomes are sought. The RPV sustainability focus areas include:

- Energy;
- Materials;
- Water Management;
- Liveability and Legacy; and
- Climate Change Resilience.

The RPV sustainability focus areas and applications are presented in Figure 2–3.

Figure 2–3: Sustainability focus areas and applications



The performance of the Alliance in respect of the RPV sustainability focus areas will be measured as part of the Risk or Reward Regime as set out in Schedule 8 of the draft PAA.

### 2.14.3 SUSTAINABILITY IN DESIGN AND DELIVERY

To assist in achieving the overall sustainability performance requirements set within RPV’s contractual documents, RPV will provide its Sustainability in Design and Delivery (**SDD**) document at the RFP Phase.

The SDD provides the overarching approach of RPV and its delivery partners to embed sustainability and climate change considerations across the design and delivery phase of projects. The Alliance will be required to develop, implement and maintain a Sustainability Management Plan that complies with RPV’s SDD document.

## 2.15 URBAN DESIGN

The Alliance will be required to deliver the Project in accordance with the RPV Urban Design Framework (**UDF**) and the Project’s Urban Design Strategy to ensure the Project delivers high quality design outcomes and a positive legacy for the community.

The UDF is underpinned by six Urban Design Principles:

1. **People first** – Designing for the people who use and interact with our infrastructure – contributing to places that are safe, welcoming, accessible and inclusive.
2. **Identity and place** – Considering local context and heritage in our designs and supporting great places.
3. **Integration** – Designing our infrastructure to integrate with surrounding transport networks and local planning strategies.
4. **Engagement** – Engaging with stakeholders and communities to understand values and priorities to inform the design of our infrastructure.
5. **Design excellence** – Enhancing places and communities through designs that are site responsive, cohesive, well resolved and tested through design review.
6. **Legacy** – Designing our infrastructure with materials and detailing that are sustainable, durable, and easy to maintain.

RPV is committed to delivering rail projects that leave a positive legacy for Victorians through designing infrastructure that have lasting outcomes for local communities and connect people with jobs, education and housing, contributing to a more liveable Victoria.

The UDF and the Project's Urban Design Strategy will be made available in the EDR. In addition, further details on urban design requirements for the Project will be provided during the RFP Phase.

## 2.16 COMMUNITY AND STAKEHOLDER ENGAGEMENT

The Project will impact a wide range of stakeholders and communities, and there are a large number of local issues and interests that will need to be considered.

Effective stakeholder and community participation in the planning and delivery of major infrastructure projects can deliver better social, economic and environmental outcomes while garnering community support for the Project. The Alliance will be expected to undertake engagement activities that are specifically tailored for each Project stage. To enable this, engagement must be an appropriately resourced and integrated part of the Project with the support of senior managers from across relevant project disciplines. This includes anticipating, considering and addressing potential issues and impacts on stakeholders in communications and engagement activities.

RPV is committed to engaging with communities and stakeholders in an open, inclusive, accessible and timely manner throughout the planning and delivery of the Project. RPV expects that the Alliance will adhere to this commitment in the delivery of the Works.

Relevant stakeholders include public transport and road users, along with local communities. In particular, the Alliance should seek to communicate and engage with residents and businesses in close proximity to work sites and along the rail corridor where works will take place.

Effective coordination of works and interface management with other projects in areas where the Project will be delivered will be crucial to the success of the Project. This coordination will be made with a view to avoid and minimise potential disruption, maximise efficiencies and eliminate rework.

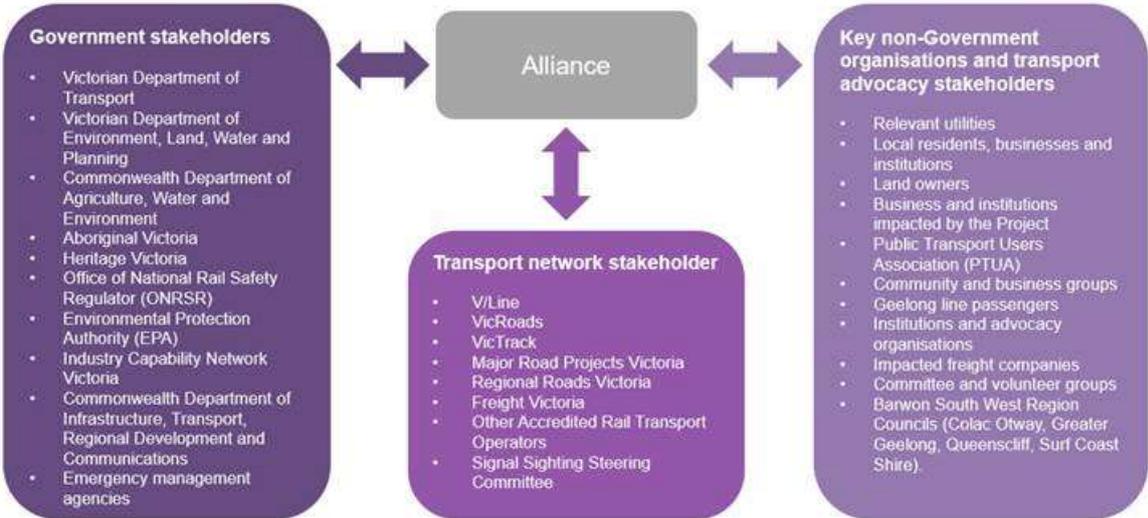
The Alliance Participants will be jointly responsible for managing stakeholder and community engagement activities along the rail corridor. Responsibility will be apportioned to specific Alliance Participants depending on their role in the Alliance, and the expertise that each party brings. Most notably:

- RPV will lead activities associated with ministerial briefings and communication with the media, and maintain whole of project oversight in relation to stakeholder and community engagement activities;
- V/Line will be responsible for communication of rail disruptions and network changes to rail network customers, in coordination with PTV and/or the DoT; and
- the Alliance Participants collectively will be responsible for managing the impact of the Project on other stakeholders affected by the Project, including local communities and businesses, and other Related State Projects.

The Alliance will be required to develop and implement an overarching Communication and Stakeholder Engagement Management Plan for managing stakeholders along the Geelong Line.

Figure 2–4 outlines several key stakeholders that will be affected by the Project (in no particular order).

Figure 2-4: Project key stakeholders



Further detail on the requirements of the Project with respect to communications and stakeholder management will be provided at the RFP Phase.

## 3. KEY PROJECT ISSUES

This section sets out some of the key issues and risks that may impact the delivery of the Project. These are presented in no particular order of importance or relevance and are not intended to be a complete list.

### 3.1 PROCUREMENT AND DELIVERY PROGRAM

RPV has developed a preliminary delivery program for the Project which assumes all works can be delivered by Q4 2024, whilst considering planning approvals, environmental approvals, interfaces and technical constraints.

During the RFP Phase, the Shortlisted Respondents will be required to develop their design to a sufficient level of detail and certainty in order to support timely project delivery. In addition, Shortlisted Respondents should also consider the delivery timelines of Related State Projects when contemplating the staging of the works in order to minimise disruptions and potential interfaces during delivery.

Schedule 8 of the draft PAA aims to incentivise the Alliance to meet the Project's key milestone dates (being the Date for Operational Readiness, the Date for Physical Works Completion and the Date for Practical Completion). The Risk or Reward Regime specifically incorporates a mechanism to adjust the NOPs' remuneration as a consequence of late achievement of these milestones.

### 3.2 COMMUNITY ENGAGEMENT

The Alliance will be required to engage with stakeholders, public transport and road users and local communities in the Barwon South West region (as applicable), particularly residents and businesses within proximity to the Works.

Communication and engagement activities with stakeholders must be proactive and well-integrated into the planning and delivery of the Works. It is important that potential issues and impacts on stakeholders are anticipated, mitigated where possible and addressed in communications and engagement activities.

Several engagement methods have been used by RPV to engage the local community and stakeholders to date. These methods have been employed to:

- raise public awareness;
- understand community perceptions and aspirations;
- identify community preferences for engagement; and
- establish a framework to allow for continuous feedback on the Project.

There are several key engagement issues and risks that have already been identified for the Project and other issues are likely to emerge as the Project progresses. These issues include:

- construction impacts (noise, dust, restriction of access to local roads etc);
- ecological, cultural heritage and historic heritage implications;
- disruption fatigue;
- involvement of the local community in the design phase; and
- opportunities for local, youth and indigenous employment.

The Alliance will be required to manage all community and stakeholder engagement in relation to the delivery of the Project. The performance of the Alliance in respect of community and stakeholder engagement will be measured as part of the Risk or Reward Regime as set out in Schedule 8 of the draft PAA.

### **3.3 AVOIDING AND MINIMISING POTENTIAL DISRUPTION**

The Alliance will undertake works within a large number of local communities across different regions. A significant aspect of successful delivery will be the management of disruption from construction and rail occupations to a range of stakeholders. The Alliance will be responsible for designing and staging implementation of the Works to minimise disruption along the impacted rail corridor. The Alliance will also be responsible for engaging and collaborating with local communities, businesses, rail operators, local government agencies, State government stakeholders, and public transport and road users, as required throughout delivery.

Requirements for occupations for the Project are expected to be extensive due to the nature of the potential impacts on train network operations and safety. Schedule 8 of the draft PAA includes a framework for incentivising and facilitating the optimisation of the occupations approach for the Project.

### **3.4 GEOTECHNICAL AND CONTAMINATION INVESTIGATIONS**

RPV has undertaken preliminary investigations and surveys in order to establish existing site conditions, including geotechnical and contamination reports along the rail corridor. These reports provided are for information purposes only and will be made available to Pre-qualified Respondents in the EDR during the EOI Phase.

The Pre-qualified Respondents may at their discretion, request that RPV undertakes additional geotechnical investigations as part of their EOI Response as clarification questions via the EDR in accordance with section 9.4 and by the Clarification Closing Time and Date.

The State will consider any such requests and may, at its absolute discretion, elect to:

- undertake such further investigations on behalf of the Pre-qualified Respondents; or
- not undertake or allow any further investigations.

In the event of the former, results will be provided during the RFP Phase.

### **3.5 EARLY WORKS**

RPV is considering potential approaches and opportunities for early works that will enable better utilisation of time during the procurement process and ultimately offer program and cost savings during delivery. Based on a preliminary assessment, RPV has shortlisted the below items as potential early works activities:

- utility service relocations and associated works;
- design development;
- development and submission of V/Line Site Access Permits;
- establishment of Alliance management systems and processes;
- development of Key Management Plans; and
- site investigations.

As part of EOI Comparative Evaluation Criterion 3, Pre-qualified Respondents will be required to nominate any early works that demonstrate program and cost savings during delivery and enable the achievement of program completion as outlined in Table 1-2. Nominated early works may include the above proposed early works activities, or other potential early works activities identified by the Pre-qualified Respondent

Further information about potential early works will be provided to Shortlisted Respondents at the RFP Phase.

## 3.6 ECOLOGY CONSIDERATIONS

RPV is undertaking investigations to confirm whether the Project would impact listed and protected species under Victorian or Commonwealth legislation. Preliminary investigations, known species records and incidental observations suggest the likelihood of a number of threatened species listed under the EPBC Act being present in the vicinity of the Project area.

On this basis, the Project may require a number of referrals under the EPBC Act (**EPBC Referral**) which will outline the specific working conditions and requirements for managing these threatened species through delivery. RPV will be responsible for obtaining the EPBC Referral(s) (as applicable).

If the presence of listed and protected species is confirmed, RPV will be responsible for developing and lodging any required approvals documentation. RPV may request that the Respondents provide design and construction information and technical data to support any subsequent approvals that are required after contract award.

The Alliance will be responsible for complying with the conditions of any ecological approvals granted by Victorian or Commonwealth agencies to RPV, including the requirements of any 'no-go zones' that may be requested by RPV in order to protect listed and protected species during the design and construction of the Project.

A copy of the preliminary assessment has been made available in the EDR. Further ecological assessment information will be made available during the RFP Phase.

## 3.7 OPERATIONAL RAIL NOISE

Operational rail noise associated with the Project alignment needs to be considered with respect to the requirements of the Passenger Rail Infrastructure Noise Policy (**PRINP**). The PRINP is a State government policy (applying to State government land) that is triggered when a statutory approval is required for the redevelopment of existing passenger rail infrastructure.

The PRINP provides Investigation Thresholds to guide transport bodies when assessing the impacts of rail noise on nearby communities. The thresholds are not a limit on allowable noise emissions. If they are exceeded, then operational rail noise is considered to be a 'primary matter' and consideration of options for avoiding, minimising and mitigating rail noise is required.

The Alliance will be responsible for complying with the PRINP and working with RPV to ensure the design of the Project responds to opportunities for avoiding, minimising and mitigating rail noise, as appropriate.

## 3.8 RAIL ACCREDITATION REQUIREMENTS

The Office of the National Rail Safety Regulator (**ONRSR**) plays a key role in ensuring that rail systems are delivered and operated to ensure the safety of all rail infrastructure and rolling stock. The Alliance will work under V/Line's RTO accreditation.

For more information on ONRSR's rail safety accreditation requirements, refer to ONRSR's Major Project Guidelines at <https://www.onrsr.com.au/publications/major-projects-guideline>.

## 3.9 WORKPLACE HEALTH AND SAFETY

RPV's workplace health and safety philosophy is focused on eliminating or reducing risks to health and safety in order to achieve the overarching objective of "*conducting the Projects safely, preventing harm to workers or others affected by works on the rail corridors, and inspiring exceptional health and safety performance*". For the Project, this objective can be achieved if the Alliance:

- ensures that safety is a core value;
- aspires to provide their people, their contractors, their stakeholders and members of the public with the highest level of protection;
- demonstrates visible safety leadership and inspires their people, contractors and stakeholders to value exceptional health and safety performance;

- leads an environment of trust and transparency;
- promotes safety innovation and recognises exceptional health and safety performance; and
- monitors, reviews and achieves continual improvement in health and safety performance.

RPV requires exceptional health and safety management, and that all health and safety risks are identified and subsequently eliminated or reduced so far as is reasonably practicable. RPV also expects development and implementation of safety initiatives to drive continuous improvements to safety performance throughout delivery. Meeting these obligations requires proactive management of health and safety throughout delivery by:

- nominating an appropriate Member of the Respondent as the Principal Contractor for the purposes of Health and Safety Laws;
- ensuring compliance with all relevant Health and Safety Laws;
- ensuring compliance with all mandatory State and Commonwealth safety management requirements, including compliance with the Ministerial Directions, Ministerial Instructions and the WHS Accreditation Scheme (as applicable); and
- utilising an effective AS4801:2001 accredited system (or comparative international standard) to deliver the Project safely and manage risks to health.

As part of EOI Comparative Criterion 5, Respondents are required to demonstrate their capabilities and experience with respect to safety and their proposed approach to the management of safety issues on the Project. Respondents are expected to demonstrate new industry initiatives and innovations they have developed and implemented to further enhance and improve their proposed approach to the management of safety issues on the Project.

During the RFP Phase, the Shortlisted Respondents will be required to demonstrate how they (including their Members and subcontractors) intend to implement, comply with, monitor and review RPV's conditions regarding safety, including how those measures will be managed through the health and safety management plan.

During delivery of the Project, achievement of RPV's safety objectives is incentivised through the performance regime set out in Schedule 8 of the draft PAA.

### 3.10 INDUSTRIAL RELATIONS

RPV expects the Project to be delivered with no or minimal disruption due to employment or industrial relations issues. Effective management of employment and industrial relations issues and risks must be a priority during both the planning and delivery of the Project. In particular, RPV expects the management of employment and industrial relations to:

- achieve a stable working environment;
- promote safe, productive and efficient work practices to achieve the timely completion of the Project;
- provide flexible work practices that support minimising disruption to the transport network;
- minimise lost time and disruption;
- ensure ongoing compliance with all State and Commonwealth industrial relations legislative and administrative requirements (as applicable); and
- not compromise the on-time and on-budget completion of the Project.

At the RFP Phase, Shortlisted Respondents will be required to demonstrate their ability to achieve these objectives and effectively manage employment and industrial relations matters in connection with the Project. In addition, Shortlisted Respondents will be required to demonstrate compliance with all mandatory State and Commonwealth industrial relations legislation and administrative requirements, including compliance with the Ministerial Directions, the Ministerial Instructions and the *Code for the Tendering and Performance of Building Work 2016*.

# 4. PROJECT GOVERNANCE AND ALLIANCE STRUCTURE

## 4.1 PROJECT GOVERNANCE

### 4.1.1 STATE GOVERNMENT

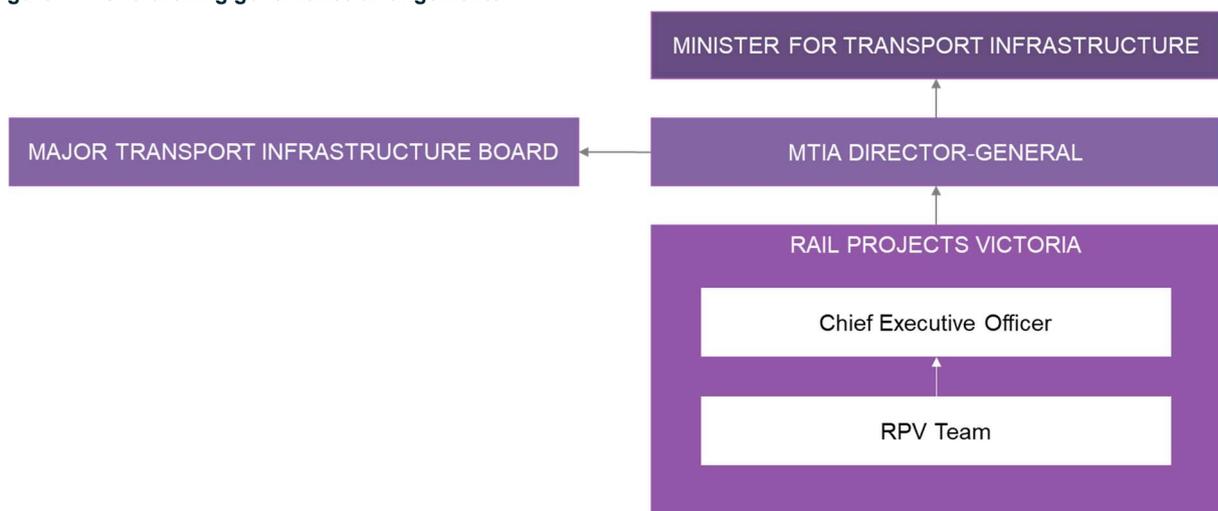
The Major Transport Infrastructure Authority (**MTIA**) was established on 1 January 2019 to oversee major transport projects in planning and construction. MTIA is an administrative office in relation to the DoT under section 11 of the *Public Administration Act 2004* (Vic).

RPV, as a division of MTIA, is responsible for the planning and delivery of the Project. The Minister for Transport Infrastructure is the lead Minister for the Project, as well as the broader RPV project portfolio.

The Director-General has been appointed by the Premier as the head of MTIA. The Secretary of DoT appointed the Major Infrastructure Board as an advisory board that governs the delivery of the RPV project portfolio, including the Project.

Figure 4–1 illustrates the proposed high-level project governance under which the Project will be delivered.

Figure 4–1 Overarching governance arrangements



### 4.1.2 COMMONWEALTH GOVERNMENT

Commonwealth engagement on the Project will be conducted in accordance with the *National Partnership Agreement on Land Transport Infrastructure Projects (NPA)*. The Department of Infrastructure, Transport, Regional Development and Communications will monitor delivery of the Project and require reporting obligations to be fulfilled as required under the NPA. DoT will be responsible for managing these reporting obligations. The Project may be required to support DoT with NPA reporting obligations.

### 4.1.3 TRANSPORT INTEGRATION ACT

In determining the requirements for the Project, regard has been given to the transport system objectives under the *Transport Integration Act 2010* (Vic), including the way in which the scope of works will address the integration of transport and land use, the efficiency, coordination and reliability of the public transport network and the timely delivery of those outcomes. Ongoing consideration of the transport system objectives will remain a key driver for RPV throughout the Project.

Respondents must have regard to the transport system objectives and decision-making principles under the *Transport Integration Act 2010* (Vic) in preparing their EOI Responses.

## 4.2 PROCUREMENT PHASE

### 4.2.1 RPV TEAM

A dedicated RPV project team (**RPV Team**) will manage the Procurement Process and the design, construction and commissioning phases of the Project.

### 4.2.2 RPV ADVISERS

RPV has appointed a number of RPV advisers (**RPV Advisers**) on an exclusive basis for the Project. The key RPV Advisers are set out in Table 4-1.

**Table 4-1: RPV Advisers**

Expertise	RPV Adviser
Technical, Planning and Engagement Adviser	Aurecon Jacobs Mott MacDonald ( <b>AJM</b> ) Joint Venture
Constructability Adviser	Advisian
Legal Advisers	Ashurst Australia and PwC
Commercial Advisers	KPMG
Cost Estimators	Turner & Townsend and Donald Cant Watts Corke
Probity Auditor	Pitcher Partners
Probity Adviser	O'Connor Marsden and Associates

Consultants utilised by RPV, or sub-consultants to the above RPV Advisers, in relation to the Project are also not available to Pre-qualified Respondents without prior written consent from RPV. A list of RPV consultants and sub-consultants utilised by the above RPV Advisers is provided in Appendix D.

It is each Pre-qualified Respondent's responsibility to ensure that any adviser or consultant it proposes to use is not precluded from participating in the Procurement Process. Pre-qualified Respondents must seek consent from RPV to use an adviser or consultant which is or has previously been engaged by RPV directly or as a sub-consultant.

By submitting an EOI Response, each Respondent acknowledges:

- the advisers set out in section 4.2.2 of this Invitation for EOI have been appointed to assist RPV in respect of the Project;
- the importance of RPV having access to its RPV Advisers for the full lifecycle of the Project;
- perceptions of unfair advantage with respect to the EOI Phase risk the integrity of the Procurement Process, and that a Respondent or a Member appointing an RPV Adviser or sub-consultant may generate perceptions of unfair advantage and actual or perceived conflicts of interest; and
- the Respondent and each Member does not have a legal or commercial conflict with the advisers set out in Table 4-1 and Appendix D, and neither the Respondent nor any Member will allege such a conflict exists in the future.

# 4.3 DELIVERY PHASE

## 4.3.1 PROJECT ALLIANCE STRUCTURE

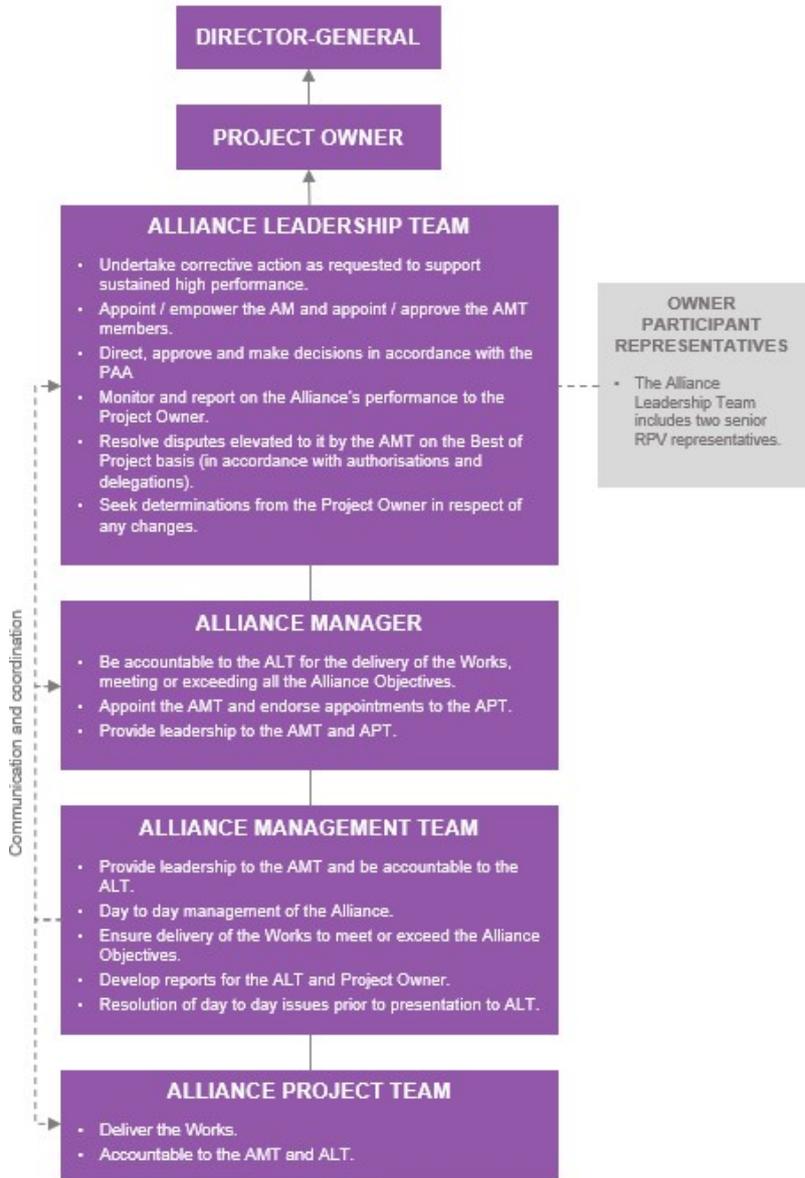
The Alliance Participants for the Project will be:

- RPV;
- V/Line; and
- the Non-Owner Participants (being the Successful Proponent).

Regardless of the mix of representation, the aim is for each Alliance Participant to operate as part of a single body (the Alliance), such that the interests of each Alliance Participant are best served by advancing the interests of the Alliance as a whole (with the exception of certain powers which are reserved for RPV and V/Line).

Figure 4-1 illustrates the proposed leadership and management structure of the Alliance.

**Figure 4-1 Alliance leadership and management structure**



The Alliance reports to the Project Owner. The Project Owner will oversee the Project and provide key decisions and directions to the Alliance Leadership Team (**ALT**). The decisions made and directions given by the Project Owner will be in accordance with the delegations and authority provided by the Director-General and, within RPV, by RPV's Chief Executive Officer (**RPV CEO**). RPV's CEO will be appointed as the initial representative of the Project Owner under the PAA, whose functions under the PAA may be carried out by Project Owner personnel in accordance with their appointments.

RPV will also use industry experts and advisers, including an independent construction adviser (Advisian), independent estimators (Turner & Townsend and Donald Cant Watts Corke), financial auditor (KPMG), commercial advisers (KPMG) and legal advisers (Ashurst Australia and PwC). These parties will be appointed by RPV and report to the Project Owner to provide independent validation of costs and advice on a range of other topics, as required.

The following sections summarise the proposed Alliance specific accountabilities and responsibilities.

### 4.3.2 ALLIANCE LEADERSHIP TEAM

The Alliance Leadership Team (**ALT**) will comprise two senior members from RPV, one senior member from V/Line, and one senior member from each of the Members forming the Successful Proponent. The ALT will be chaired by one of the RPV representatives. The primary functions of the ALT will be to:

- establish and ensure implementation of the strategic leadership and direction of the Alliance Participants;
- establish and implement transparent governance and accountability structures for the Alliance Participants; and
- assume responsibility for the performance of the Alliance Participants under the PAA.

Each ALT member must be authorised to represent and bind their respective Alliance Participant on any matter relating to the PAA. Decisions of the ALT must be unanimous.

### 4.3.3 ALLIANCE MANAGER

The ALT will appoint an Alliance Manager who will report directly to the ALT. The functions of the Alliance Manager are set out in the Governance Plan and Responsibilities Matrix in the draft PAA, and include:

- appointing, leading and managing the Alliance Management Team (**AMT**) and Alliance Project Team (**APT**); and
- accountability to the ALT for delivering the Project and achieving the Alliance Objectives and Project Objectives, respectively.

Respondents are invited to nominate an individual for the role of Alliance Manager in their EOI Response as part of Returnable Schedule 8.

### 4.3.4 ALLIANCE MANAGEMENT TEAM

The members of the AMT will be selected by the Alliance Manager and endorsed by the ALT. The AMT will comprise the Alliance Manager, plus at least one representative from each Alliance Participant, V/Line and RPV. It is expected that most AMT members will be engaged full time in the Alliance.

The functions of the AMT will include:

- providing day-to-day leadership to the APT;
- developing reports for the ALT;
- resolving day-to-day issues prior to presentation to the ALT; and
- ensuring delivery of the Project to achieve the Alliance Objectives and Project Objectives, respectively.

### 4.3.5 ALLIANCE PROJECT TEAM

Members of the Alliance Project Team (APT) will be selected by the Alliance Manager and will be drawn from personnel of the Alliance Participants on a 'best person for the job' basis, with the intention the structure will reflect a single body with no duplication of responsibilities. The function of the APT is delivery of the Project in accordance with the PAA. It is accountable to both the AMT and ALT.

### 4.3.6 ROLE OF RPV AND V/LINE

The Alliance will apply the capabilities of all Alliance Participants. This section outlines the expected capabilities and contribution to the Alliance of RPV and V/Line.

#### **RPV**

RPV is both the 'Project Owner' (when it is acting as the client for the performance of the Works), and the Owner Participant. RPV will be represented on the ALT, AMT and APT.

RPV will assist the Alliance by providing insight into:

- government perspective on large rail projects;
- operational owner perspectives (project specific and network wide);
- knowledge, in the government project context, in planning, land acquisition and environmental compliance areas;
- management of RTO agreements;
- management of communications and government relations; and
- specific knowledge of government requirements for rail infrastructure.

#### **V/LINE**

V/Line will be an Alliance Participant and be represented on the ALT, AMT and APT.

The scope of V/Line's role will be detailed in the PAA (including Schedule 41 – V/Line Role and Schedule 11 – PS&TR). The role will include aspects of its role as an RTO which relate to the Project.

V/Line is the:

- RTO, responsible for providing, maintaining and varying accreditation under the *Rail Safety National Law Application Act 2013 (Vic)*;
- rail operator and maintainer, responsible for providing passenger services and managing the future assets; and
- access provider, responsible for providing access and occupations and providing replacement services.

In this capacity, V/Line will be required to review and accept or comment on all designs, site access and safe working methods in the operational corridor, occupation requests, type approvals, engineering changes and to accept the final Works into operation and maintenance.

V/Line will facilitate interface with the functional divisions of V/Line on behalf of the Alliance and may undertake some elements of the Works on a best for project basis.

V/Line will also participate in the Procurement Process, including providing advice on documentation and participating in the evaluation, where requested.

# 5. DRAFT COMMERCIAL AND LEGAL ARRANGEMENTS

## 5.1 ALLIANCE PRINCIPLES

The Project will be delivered through the alliance delivery model. The alliance culture and behavioural commitments of the Alliance Participants will be set out in an Alliance Charter schedule in the PAA and will be characterised by the following principles:

- good faith and integrity;
- decision making on a 'best for project' basis;
- a commitment to no disputes;
- a 'no fault-no blame' culture;
- transparency through open book documentation and reporting;
- a joint management structure where responsibility is shared between the Alliance Participants; and
- a culture of continuous improvement.

Further information regarding the alliance philosophy and principles is set out in the Commonwealth Government's *National Alliance Contracting Guidelines*. Although these guidelines provide background and context to the alliance structure and key principles, alliances may have different technical, commercial and legal arrangements. The proposed Commercial Framework and Legal Framework for the Project is outlined in the following sections.

## 5.2 DRAFT COMMERCIAL AND LEGAL FRAMEWORK

This section provides a high-level summary of the draft Commercial Framework and Legal Framework for the Project. Further details are contained in the:

- draft Commercial Framework Overview; and
- draft ADA, PAA and related contractual documentation,

which are provided to Pre-qualified Respondents in the EDR.

Respondents will need to confirm, as part of their EOI Comparative Evaluation Criterion 4, their willingness to enter into:

- an Alliance with the other Alliance Participants; and
- the form of ADA and PAA provided during the EOI Phase, including any departures sought.

It will be a condition of the RFP Phase that Shortlisted Respondents and the Preferred Proponent must comply with, and must not withdraw from, these commitments. The draft Commercial Framework and Legal Framework for the Project will be finalised for the RFP Phase and will be documented in the final PAA and associated contractual documentation.

### 5.2.1 DRAFT COMMERCIAL PRINCIPLES

RPV is committed to achieving commercial outcomes that provide value for money for the State. At a high level, the Commercial Principles which inform the draft Commercial Framework and Legal Framework for the Project are as follows:

- all Alliance Participants are jointly responsible for achieving the Alliance Objectives;
- 100% open and transparent accounting;

- actual cost reimbursement (subject to certain exceptions);
- collective assumption of risk in accordance with the Risk or Reward Regime;
- NOPs' remuneration is commensurate with their performance;
- the NOPs are incentivised to achieve the Alliance Objectives;
- performance that exceeds the minimum requirements may lead to a reward payment under the Risk or Reward Regime; and
- performance that fails to achieve minimum requirements may lead to liability under the Risk or Reward Regime.

## 5.2.2 DRAFT COMMERCIAL FRAMEWORK

The NOPs will be remunerated in accordance with the following principles. Further details regarding the calculation of each element is provided in the draft Commercial Framework Overview and draft PAA (namely, Schedule 6, Schedule 7 and Schedule 8).

### REIMBURSABLE COSTS

Each Alliance Participant will be paid its Reimbursable Costs (subject to certain exceptions to be set out in the PAA), which are the costs actually and reasonably incurred to perform the Project in accordance with the PAA, regardless of whether this amount is more than or less than the TOC. Within the Reimbursable Costs framework, no Alliance Participant should derive any mark up, overhead, profit or unreasonable advantage from the utilisation of its resources for the Project, unless otherwise agreed pursuant to the terms of the PAA.

All claims for Reimbursable Costs must be on an open book basis and are fully auditable. Reimbursable Costs will be comprised of:

- direct Reimbursable Cost items, as described in Schedule 6 of the draft PAA;
- Reimbursable Cost Multipliers (**RCMs**) as tendered by the Respondents to cover employment on-costs (and business unit on-costs for the Designer NOP); and
- the Owner Participant's costs incurred through the provision of resources for the Alliance.

Respondents are required to competitively tender the proposed RCMs for each NOP as part of the EOI Phase, with reference to the draft PAA for the purpose of calculating the RCMs. RCMs must be based on actual cost historical accounting records in accordance with the draft PAA. Any other costs which are ordinarily treated as a project cost or are otherwise not permitted to be included in a Respondent's RCMs must instead be included in the Corporate Overhead and Profit.

Pre-qualified Respondents are required to competitively tender separate proposed RCMs for each NOP at the EOI Phase, in accordance with the following:

- 'Competitively Bid' RCMs – For each NOP, this RCM should reflect its bid position, which may or may not include proposed departures to Schedule 6 of the draft PAA. In the event that the 'Competitively Bid' RCMs include departures to Schedule 6 of the PAA, the Pre-qualified Respondent must submit a detailed description of each proposed departure detailing any consequential pricing impacts, if any, and/or benefits the departures will have on the 'Competitively Bid' RCMs and 'Competitively Bid' Corporate Overhead and Profit. For avoidance of doubt, RPV will consider this as each NOP's primary RCM and it will be used for competitive evaluation purposes; and
- 'Baseline' RCMs – For each NOP, this RCM should reflect full compliance with Schedule 6 of the draft PAA. RPV will consider this as a baseline for comparison against each NOP's own Competitively Bid RCM and it will not be used for competitive evaluation purposes. Acknowledging that the 'Baseline' RCMs may have an impact on the Pre-qualified Respondent's Corporate Overhead and Profit, Pre-qualified Respondents are required to also provide a separate Corporate Overhead and Profit for the 'Baseline' RCMs reflecting any such impacts.

As part of the EOI Phase, RPV will provide feedback on material RCM issues and/or departures submitted in the Respondent's EOI Response during the commercial and legal workshops that will take place following EOI Closing Time and Date.

During the RFP Phase, the Shortlisted Respondents will be required to agree final RCMs with RPV prior to completion of the Interactive Process (e.g., prior to the submission of binding Project Proposals).

The draft Commercial Framework Overview and Schedule 6 of the draft PAA contains the details of the Reimbursable Costs definitions. In addition, the draft Commercial Framework Overview provides the detailed process for agreeing RCMs during the Procurement Process.

## **CORPORATE OVERHEAD AND PROFIT**

Corporate Overhead and Profit provides the only contribution (other than under the Risk or Reward Regime) to the NOPs' entitlement to profit and corporate overheads for the Project. The Shortlisted Respondent's Corporate Overhead and Profit expectations must reflect:

- an equitable return for delivering the Project whilst achieving minimum performance standards in the defined KRAs; and
- the benefits of the alliance approach, including the collective assumption of risk by all Alliance Participants.

Pre-qualified Respondents are required to competitively tender a separate proposed Corporate Overhead and Profit percentage for each NOP at the EOI Phase, in accordance with the following:

- 'Competitively Bid' Corporate Overhead and Profit – For each NOP, this percentage should reflect its bid position, such that any consequential pricing impacts, if any, and/or benefits resulting from the proposed departures to Schedule 6 of the draft PAA (i.e. reflective of the NOP's 'Competitively Bid RCMs') are reflected in this percentage (as applicable). For avoidance of doubt, RPV will consider this as each NOP's primary Corporate Overhead and Profit percentage and it will be used for competitive evaluation purposes; and
- 'Baseline' Corporate Overhead and Profit – For each NOP, this percentage should include all costs that are reflective of the 'Baseline RCMs' (i.e. the Corporate Overhead and Profit percentage that is reflective of full compliance with Schedule 6 of the draft PAA). RPV will consider this as a baseline for comparison against each NOP's own Competitively Bid Corporate Overhead and Profit percentage and it will not be used for competitive evaluation purposes.

Shortlisted Respondents will be required to re-confirm their proposed 'Competitively Bid' Corporate Overhead and Profit percentages in their Project Proposal. Reference should be made to the draft PAA requirements with respect to items that RPV expects to be covered in the Respondent's Corporate Overhead and Profit amounts.

## **RISK OR REWARD REGIME**

The Risk or Reward Regime includes incentive mechanisms to drive financial and non-financial performance.

Financial performance is measured using the Cost Risk or Reward Regime via the NOPs' performance against the TOC. Non-financial performance is measured under the Performance Risk or Reward Regime via the NOPs' performance against Key Performance Indicators (**KPIs**). The Risk or Reward Regime may result in both payment of reward amounts by RPV to the NOPs and the payment of risk (or liability) amounts by the NOPs to RPV. The key features of the Risk or Reward regime are as follows:

- NOPs will receive a cost reward payment equal to 35% of any cost savings, up to the NOP Cost Reward Cap of approximately 5% of TOC (noting that the final NOP Cost Reward Cap amount will be confirmed at the RFP Phase);
- NOPs will make a cost risk payment to RPV equal to 50% of any cost overruns;
- NOPs will receive a performance reward payment where the alliance achieves performance greater than the Minimum Condition of Satisfaction (**MCOS**) (the performance reward payments will be subject to the specified reward maximum);
- NOPs will make a performance risk payment to RPV in relation to specific KPIs where the Alliance's performance does not meet the MCOS (the performance risk payments will be subject to the specified risk maximum amount for each KPI);
- NOPs' total entitlement to reward payments (cost reward plus performance reward) will be reduced by a specified percentage if:
  - a fatality event occurs;
  - performance in specific KPIs is less than a specified threshold; or

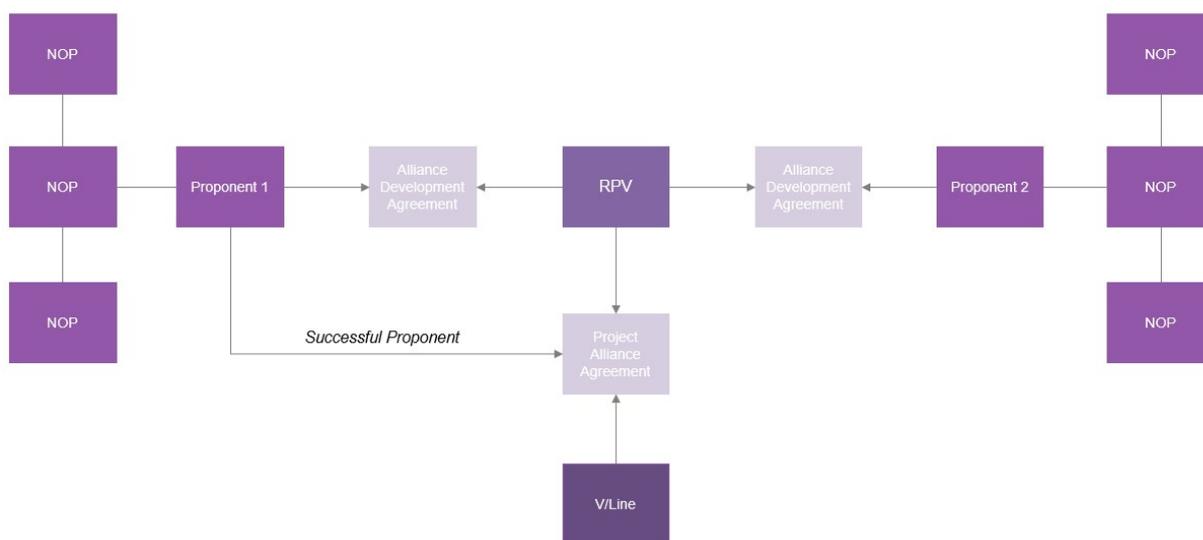
- average performance across a group of KPIs is less than a specified threshold; and
- the maximum cost and performance risk amount that each NOP will be liable for will be capped. Shortlisted Respondents are required to bid their proposed risk cap, which must be greater than or equal to their Corporate Overhead and Profit amount, plus any performance reward amount (i.e. the NOP Risk Cap).

The Project draft Commercial Framework Overview and Schedule 8 of the draft PAA contains the details of the proposed Risk or Reward Regime.

### 5.2.3 DRAFT LEGAL FRAMEWORK

Figure 5–1 illustrates the proposed Legal Framework for the Project.

**Figure 5–1: Legal Framework**



#### ALLIANCE DEVELOPMENT AGREEMENT

RPV will enter into an ADA with each Shortlisted Respondent prior to providing the Shortlisted Respondent with the RFP. The ADA will govern the terms of the relationship between RPV and the Shortlisted Respondents, and RPV and the Preferred Proponent, during the RFP Phase.

The form of ADA provided with this Invitation for EOI is generally consistent with the standard form in the *National Alliance Contracting Guidelines*, tailored as necessary to meet the specific requirements of the Project. As part of EOI Comparative Criterion 4, Respondents will need to confirm as part of their EOI Response that they will be willing to either commit to the form of ADA or advise of any material departures sought.

The draft ADA will be made available to Pre-qualified Respondents in the EDR.

#### PROJECT ALLIANCE AGREEMENT

The Successful Proponent, RPV and V/Line, will enter into a PAA following the conclusion of the RFP Phase. The PAA governs the delivery of the Project.

The form of draft PAA is generally consistent with the standard form in the *National Alliance Contracting Guidelines*, tailored as necessary to the specific requirements of the Project. The draft PAA (inclusive of some, but not all of the Schedules) is available to Pre-qualified Respondents in the EDR.

As part of EOI Comparative Criterion 4, Respondents will have an opportunity to submit departures to the draft PAA, which will be evaluated by RPV. It is RPV's expectation that each Respondent will work with RPV through the commercial and legal workshops that will take place after the EOI Closing Time and Date, to agree a list of departures that are accepted, closed / not accepted, or carried forward to the RFP Phase for further consideration, prior to any Respondent being selected as a Shortlisted Respondent to participate in the RFP Phase.

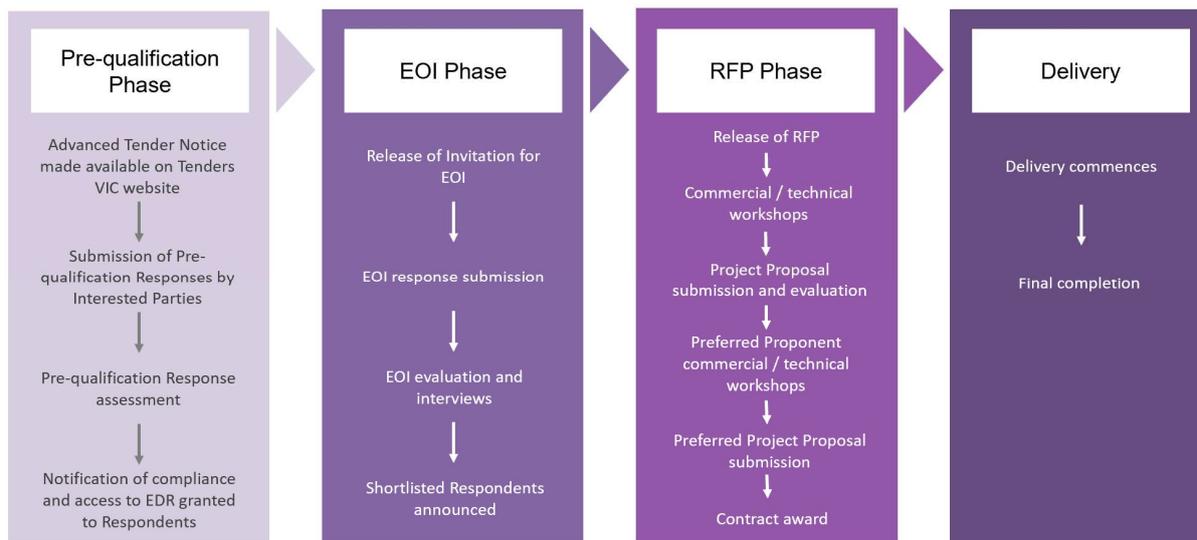
After that process, Respondents must not raise new departures in respect of draft PAA terms that have been available at EOI Phase. Such terms are to be treated as having been considered and taken into account prior to a Respondent being selected as a Shortlisted Respondent. A final departures position will be requested as part of the Project Proposal, noting that its purpose is to reflect the Respondent's final position after the Interactive Process (and it is not an opportunity to revisit prior settled positions on terms).

# 6. PROCUREMENT PHASE

## 6.1 OVERVIEW

The Procurement Process has been designed to select the Respondent that is best placed to meet the requirements set out by RPV. The key steps in the Procurement Process are illustrated in Figure 6–1.

Figure 6–1: Procurement Process summary



## 6.2 PRE-QUALIFICATION PHASE

The Pre-qualification Phase is described in section 1.4.1.

Interested Parties that submitted a Pre-qualification Response, met the Pre-qualification Requirements and are notified that they have successfully pre-qualified and met the Pre-qualification Requirements, become eligible to access the EDR and participate in the EOI Phase.

## 6.3 EOI PHASE

### 6.3.1 OVERVIEW

RPV invites Pre-qualified Respondents to submit an EOI Response with the objective of shortlisting up to two Respondents to advance to the RFP Phase.

The evaluation of the EOI Responses by the Evaluation Panel will be used to shortlist Respondents to participate in the RFP Phase that have the proven experience, capability and capacity to deliver the Project.

Pre-qualified Respondents must provide an EOI Response in accordance with the specific requirements contained in the Returnable Schedules (Volume 1B of this Invitation for EOI), including proposed departures to the draft ADA and draft PAA (if any). EOI Responses will be assessed against the EOI Mandatory Evaluation Criteria (as described in section 8.3 and the EOI Comparative Evaluation Criteria (as described in section 8.4) for the purpose of shortlisting Respondents to participate in the RFP Phase.

### **6.3.2 PRE-QUALIFIED RESPONDENT CLARIFICATION WORKSHOPS**

During the EOI phase, RPV will provide each Pre-qualified Respondent the opportunity to have one clarification workshop with RPV regarding the development of its EOI Response prior to the EOI Closing Time and Date. The clarification workshop is designed to ensure Pre-qualified Respondents have a complete understanding of the information provided in the EOI Phase in advance of submitting the EOI Response. Any presentations made or materials presented by any of the Pre-qualified Respondents at the clarification workshops will not be taken into account in the evaluation of the EOI.

Each clarification workshop will be undertaken between RPV and each Pre-qualified Respondent separately from other Pre-qualified Respondents. The content of each clarification workshop will consist of discussions about the:

- key technical features, issues and risks (one hour); and
- commercial terms (one hour).

During the clarification workshop RPV will not direct the Pre-qualified Respondents or provide solutions as to how to best address the requirements of the Invitation for EOI. Any comments provided in the clarification workshop do not in any way constitute an endorsement, approval or evaluation of a concept by RPV and are not to be interpreted as such. In addition, nothing from the clarification workshops will bind RPV or the State, or modify any aspect of the Procurement Process unless set out by RPV in an amendment to the Procurement Process (e.g. an addendum to the Invitation for EOI).

Material may be tabled by the Pre-qualified Respondents at a clarification workshop; however, this material will not be retained by RPV representatives and it must be collected and removed at the end of the clarification workshop by the Pre-qualified Respondents. Any material provided by the Pre-qualified Respondents at any workshop will not constitute a formal submission and will not be taken into account in the evaluation of any EOI Response.

RPV notes that the workshop will not be evaluated, and that should Pre-qualified Respondents wish to rely on clarification workshop information discussed they should submit a formal question for RPV response through the agreed communication protocol.

To request a clarification workshop, a Pre-qualified Respondent must submit a request through the EDR on behalf of the consortium proposed in its Pre-qualification Response. RPV recommends that Pre-qualified Respondents submit clarification workshop requests early in the EOI Phase.

Clarification workshop requests must be submitted a minimum of three weeks before the EOI Closing Time and Date.

### **6.3.3 RESPONDENT INTERVIEWS AND PRESENTATIONS**

Following submission of EOI Responses, RPV may require Respondents to attend an interview or make a presentation to gain a better understanding of their capability, to clarify any issues arising from their EOI Response and to assist in determining which Respondents should be shortlisted. The purpose is to allow:

- Respondents to present the key features of their EOI Response;
- RPV to work with Respondents on selected topics, nominated by RPV;
- RPV to clarify key aspects of the Respondent's EOI Response; and
- RPV to further assess the Respondent team's performance and interaction with RPV and other relevant parties.

The RPV Probity Adviser may be present at all interviews and presentations. Further details of the interviews and presentations will be provided in advance of any schedule being confirmed. These details will include an agenda and key personnel required to attend from the Respondent and RPV.

## 6.3.4 RESPONDENT COMMERCIAL AND LEGAL WORKSHOPS

Following submission of EOI Responses, RPV will hold a commercial and legal workshop with each Respondent to resolve any commercial and legal departures prior to selecting the Shortlisted Respondents.

Prior to the commercial and legal workshop, RPV will communicate its position in relation to the Respondent's proposed departures (including RCMs). Respondents will be required to consider RPV's position and any other feedback and prepare a response in advance of the commercial and legal workshop. This response may include the Respondent withdrawing departures altogether, withdrawing departures but amending another element of their EOI Response (e.g. RCMs, Corporate Overhead and Profit), or maintaining the departure. This response must be submitted to RPV at least 4 business days in advance of the commercial and legal workshop.

At the commercial and legal workshop, each Respondent will present its responses to RPV's positions, followed by further discussion (as applicable). The outcome of the workshop will be agreed outcomes between RPV and the Respondent in relation to each departure (this includes if the Respondent wishes to maintain the departure and be evaluated on this basis).

Following the commercial and legal workshop, RPV will provide each Respondent with an updated departures list as agreed during the workshop, which will outline which departures are accepted, rejected, or agreed to be carried forward to the RFP Phase for further consideration should the Respondent be selected as a Shortlisted Respondent to participate in the RFP Phase (if any).

RPV will issue further information including the proposed workshop date and agenda following submission of EOI Responses via the EDR. The content of workshops will not bind RPV or the State or modify any aspect of the Procurement Process unless set out by RPV in a written amendment to the Procurement Process (e.g. an addendum to the Invitation for EOI). RPV may, at its sole discretion, request further workshops with Respondents if required.

## 6.4 RFP PHASE

### 6.4.1 OVERVIEW

As outlined in section 1.4.3, the RFP Phase is expected to be split into two sub-phases – the Project Proposal sub-phase and Preferred Project Proposal sub-phase. Both sub-phases will be governed by a single ADA, which Shortlisted Respondents will be required to enter into prior to the commencement of the RFP Phase. The ADA outlines the principles under which both the Project Proposal and the Preferred Project Proposal are to be developed and sets out the obligations of Shortlisted Respondents and the Preferred Proponent during the RFP Phase. The ADA has been made available to Pre-qualified Respondents in the EDR.

The Project Proposal sub-phase is the first phase of the RFP, during which the Shortlisted Respondents will participate in an Interactive Process involving commercial, legal and technical workshops. Shortlisted Respondents will be expected to build up binding Project Proposals that include pricing and technical solutions in response to RFP requirements.

RPV will then evaluate the Project Proposals against the RFP Evaluation Criteria and expects to select a Preferred Proponent to participate in the Preferred Project Proposal sub-phase (or may make another determination in accordance with the terms of the ADA).

As part of the Preferred Project Proposal sub-phase, the Preferred Proponent will participate in another Interactive Process to further develop the Project Proposal it submitted in the Project Proposal sub-phase. At the conclusion of this phase, the Preferred Proponent is expected to submit a final, fully costed and binding Preferred Project Proposal, including a detailed Target Outturn Cost (**TOC**), which thoroughly considers all the risks and opportunities of the Project. The Preferred Proponent will be required to work with RPV, V/Line and other relevant parties to develop the Preferred Project Proposal for submission to the State.

Following submission of the Preferred Project Proposal, RPV will evaluate the Preferred Project Proposal against the RFP Evaluation Criteria and determine whether the Preferred Project Proposal meets the Alliance Objectives and Project Objectives and represents value for money to the State. RPV reserves the right, in its absolute discretion, to engage with the other Shortlisted Respondent, call for new RFP submissions or otherwise conclude the Procurement Process at any time.

Further information in relation to the RFP Proposal Phase will be provided prior to the RFP Phase.

To manage probity risks across the RFP Phase, RPV will put in place protocols for collaboration, the distribution of information and confidentiality. RPV has appointed a Probity Adviser (as described in section 9.2) to monitor the Procurement Process and address any probity issues that may arise during the Procurement Process.

## 6.4.2 INTERACTIVE DEVELOPMENT OF PROJECT PROPOSALS

The key activities and processes undertaken in the RFP Phase are defined in the ADA and an Interactive Process Guide, which will be provided to Shortlisted Respondents before workshops commence, and will broadly include:

- participating in workshops with relevant stakeholders to progress the development of the:
  - pricing, Commercial Framework and Legal Framework;
  - specific project scope and technical requirement outcomes;
  - program;
  - organisational structure and resourcing; and
  - scoping and input to early design milestones to progress implementation of Related State Projects (as applicable); and
- preparing and presenting a Project Proposal or Preferred Project Proposal, containing the Project delivery approach, the proposed team, the proposed Commercial Framework, Legal Framework and the required pricing.

It should be noted that responsibility for the development of the Project Proposals and the Preferred Project Proposal always remains with the Shortlisted Respondents and Preferred Proponent, respectively.

RPV will provide a summary of the workshops to be undertaken during each Interactive Process of the RFP. During each Interactive Process, RPV will provide further information in relation to each workshop, including:

- the agenda, including the key topics to be discussed;
- the objectives and expected outcomes;
- a list of parties that required to attend (including RPV, V/Line and Shortlisted Respondent representatives); and
- any material to be discussed (as required).

RPV will ensure that the above information is provided in advance of each workshop so that all parties are appropriately briefed and have time to prepare for each workshop.

RPV will nominate a team to manage the transfer of information between each Shortlisted Respondent or Preferred Proponent, RPV, V/Line and other relevant stakeholders during the respective Interactive Process.

## 6.4.3 SUBMISSION OF PROPOSALS

As part of the Project Proposal sub-phase, each Shortlisted Respondent will submit a Project Proposal addressing the elements set out in the RFP and ADA.

As part of the Preferred Project Proposal sub-phase, the Preferred Proponent will submit a Preferred Project Proposal addressing the elements set out in the RFP and ADA.

## 6.4.4 EVALUATION OF PROPOSALS

An evaluation panel will evaluate the Project Proposals against the RFP Evaluation Criteria and recommend the selection of one of the Shortlisted Respondents as the Preferred Proponent.

An evaluation panel will evaluate the Preferred Proponent's Preferred Project Proposal against the RFP Evaluation Criteria, the requirements of RPV's Value for Money (**VFM**) Statement, the proposed Commercial Framework and the proposed Legal Framework. If the Preferred Proponent's Preferred Project Proposal is

deemed unsuccessful, RPV in its absolute discretion may commence engagement with the other Shortlisted Respondent, call for new submissions or otherwise conclude the Procurement Process.

The recommendation to execute the PAA with the Successful Proponent will:

- progress through RPV's established governance framework;
- if endorsed by RPV, proceed to MTIB and the Minister for Transport Infrastructure for endorsement; and
- finally, proceed to the Treasurer of Victoria for approval.

## **6.5 PAYMENT OF SERVICES**

The preparation and submission of a Project Proposal by Shortlisted Respondents will constitute the provision of services to RPV under the ADA. These services will be detailed in the ADA. Any new Intellectual Property Rights contained in the Project Proposal will be owned by RPV.

Consistent with the National Alliance Contracting Guidelines, RPV will pay the unsuccessful Shortlisted Respondent a fee for the services provided, subject to the conditions of the ADA, including the audit and review mechanisms set out in the ADA. The maximum fee payable by RPV to the unsuccessful Shortlisted Respondent for participation in the RFP Phase will be the lesser of \$5 million or 1% of TOC.

## **6.6 EXECUTION OF THE PAA**

Subject to finalising all outstanding details and obtaining all necessary approvals, RPV will enter into the PAA with the Successful Proponent and V/Line. Following execution of the PAA, both Shortlisted Respondents will be offered the opportunity to attend a debriefing session on their Project Proposals.

# 7. STATE AND COMMONWEALTH REQUIREMENTS

Respondents will be required to demonstrate their compliance, or ability to comply, with relevant State and Commonwealth requirements throughout the procurement and delivery phases of the Project. These requirements inform evaluation criteria for both the EOI Phase and RFP Phase.

## 7.1 STATE REQUIREMENTS

### 7.1.1 MINISTERIAL DIRECTIONS AND INSTRUCTIONS FOR PUBLIC CONSTRUCTION PROCUREMENT IN VICTORIA

Compliance with Ministerial Directions for Public Construction Procurement in Victoria, issued in accordance with the *Project Development and Construction Management Act 1994* (Vic) (**Ministerial Directions**) and associated Instructions for Public Construction Procurement in Victoria (**Ministerial Instructions**), are mandatory State requirements. The Ministerial Directions and Ministerial Instructions (supported by non-mandatory guidelines), to be read and interpreted together, prescribe the tendering methods to be used by Victorian Government Agencies and public bodies for construction works and related services, based on the estimated value of the tender.

More information on the Ministerial Directions and Ministerial Instructions can be accessed online at:

<https://www.dtf.vic.gov.au/public-construction-policy-and-resources/ministerial-directions-and-instructions-public-construction-procurement>

As part of EOI Mandatory Evaluation Criterion 1, Respondents will be required to provide details of their demonstrated ability to comply with the Ministerial Directions and Ministerial Instructions.

### 7.1.2 LOCAL JOBS FIRST POLICY

The Local Jobs First Policy (**LJF Policy**) issued under the *Local Jobs First Act 2003* (Vic) supports businesses and workers by ensuring that small and medium size enterprises are given a full and fair opportunity to compete for both large and small government contracts, helping to create job opportunities, including for apprentices, trainees and cadets. The LJF Policy is implemented by Victorian Government departments and agencies to help drive local industry development.

The LJF Policy comprises the Victorian Industry Participation Policy (**VIPP**) and the Major Projects Skills Guarantee (**MPSG**). VIPP seeks to ensure that small and medium-sized business are given full and fair opportunity to compete for government contracts. MPSG is a policy that provides job opportunities for apprentices, trainees and cadets on high value construction projects.

Local Jobs First applicable projects include but are not limited to:

- purchase of goods and/or services, regardless of the method of procurement (including individual project tenders, State purchase contracts, supplier panels);
- construction projects (incorporating design and construction phases and all related elements), including individual projects, public private partnerships, alliance contracts, market led proposals, supplier panels and auctions; and
- grant and loan projects, including grant agreements or loan arrangements to private, non-government and local government organisations for a single or group of projects.

The LJF Policy applies the full range of Victorian Government projects that meet financial thresholds. A Local Jobs First Strategic Project is a project with a budget of \$50 million or more or any other project declared by the Minister to be a strategic project under the *Local Jobs First Act 2003* (Vic). Individual project agreements for amounts less than \$50 million may form part of a strategic project.

This Invitation for EOI is for, or part of, a strategic project with MPSG. The MPSG applies to construction projects with a budget of \$20m or more.

The requirements for the Works will include:

- a minimum local content requirement, to be advised at the RFP Phase; and
- at least 10 per cent of the total number of estimated hours of work on the Works be undertaken by apprentices, trainees or cadets.

At the RFP Phase, Shortlisted Respondents will be advised of minimum local content requirements and MPSG requirements for the Works. Each Shortlisted Respondent will be required to submit a Local Industry Development Plan (**LIDP**) and a MPSG Compliance Plan in response to the RFP, outlining how the local content and MPSG requirements will be achieved. Information contained in the LIDP and MPSG Compliance Plan will be assessed as part of the evaluation of the Project Proposals at the RFP Phase.

The Alliance's performance regarding MPSG will be measured as part of the Risk or Reward Regime as set out in Schedule 8 of the draft PAA.

For further information, Respondents should refer to the LJF Policy and guidelines which can be found at: <https://localjobsfirst.vic.gov.au>.

### 7.1.3 WORKFORCE AND TRAINING

RPV is committed to working collaboratively with industry to ensure a sustainable workforce through the further development of the skills of the existing workforce and attracting new people to the industry. As part of the RFP Phase, Shortlisted Respondents will be required to demonstrate how their approach to workforce development and training will deliver a sustainable workforce which is:

- high performing, collaborative and motivated;
- up-skilled and re-skilled, if required;
- diverse – reflective of Melbourne's multicultural fabric;
- inclusive – encouraging participation of Victorian Priority Jobseekers and underrepresented groups in the industry including women, Aboriginal or Torres Strait Islander persons, refugees and asylum seekers, retrenched workers, young people with barriers to employment and long-term unemployed people; and
- innovation conscious – with the ability to carry learnings and values to future.

At the RFP Phase, Shortlisted Respondents will also be encouraged to consider Local Learning and Employment Networks (**LLEN**), community managed, membership based, and regional networks as they develop their social procurement approach. The primary objective of LLEN is to build and facilitate partnerships and networks between members (schools, employer and community agencies) to ensure programs and strategies are in place to support the transition of young people from school to work.

The Alliance's performance regarding Priority Jobseekers will be measured as part of the Risk or Reward Regime as set out in Schedule 8 of the draft PAA.

### 7.1.4 ABORIGINAL EMPLOYMENT TARGETS

An Aboriginal employment target of 2.5 per cent based on total labour hours has been set for the delivery of the Works (**Aboriginal Employment Target**). For the purposes of the Aboriginal Employment Target, an Aboriginal person means a person of Aboriginal or Torres Strait Islander descent who identifies as Aboriginal or Torres Strait Islander and is accepted as such by an Aboriginal or Torres Strait Island community (as applicable).

At the RFP Phase, Shortlisted Respondents will be required to provide their proposed approach to achieving the Aboriginal Employment Target and measuring compliance as part of their Project Proposal. The Aboriginal Employment Target is calculated as a percentage of the total workforce hours undertaken by Aboriginal persons on the Project.

The Alliance's performance against the Aboriginal Employment Target will be measured as part of the Risk or Reward Regime as set out in Schedule 8 of the draft PAA.

## 7.1.5 SOCIAL PROCUREMENT FRAMEWORK

Victorian Government procurement is one of the largest drivers in the Victorian economy and makes a significant contribution to building a fair, inclusive and sustainable Victoria.

Value for money underpins Victorian Government procurement. It is the achievement of a desired procurement outcome at the best possible price – not necessarily the lowest price – based on a balanced judgement of financial and non-financial factors relevant to the procurement. The Victorian Government recognises environmental, social and economic factors as a core component of value for money.

The Victorian Government is committed to using its purchasing power to generate social value above and beyond the value of the goods, services and construction it procures. In the Victorian Government context, social value means the benefits that accrue to all Victorians when the social and sustainable outcomes in Victoria's Social Procurement Framework are achieved.

The Social Procurement Framework applies to the procurement of all goods, services and construction undertaken by Departments/Agencies that are subject to Standing Directions of the Minister for Finance 2016.

The social and sustainable outcomes in the Social Procurement Framework advance a number of important Victorian Government policy objectives. These outcomes include purchasing from Social Benefit Suppliers and working with all suppliers to adopt social and sustainable business practices and/or achieve social and sustainable outputs in the course of delivering the required goods, services or construction. The Victorian Government considers that all suppliers are capable of delivering one or more of these outcomes when doing business with Government.

At the RFP Phase, Shortlisted Respondents must prepare a Social Procurement Commitment Proposal.

The Social Procurement Framework, further definitions and guidance materials regarding the application of the Social Procurement Framework are available online at:

<https://www.buyingfor.vic.gov.au/victorias-social-procurement-framework>

## 7.1.6 VALUE CREATION AND CAPTURE

At the RFP Phase, Shortlisted Respondents will be required to consider and provide details in relation to their approach to the identification and implementation of potential value creation and capture opportunities outside of the scope of the Project.

Where appropriate, the Shortlisted Respondents should identify opportunities to deliver social, economic and environmental outcomes above and beyond what would ordinarily be achieved as a direct consequence of the Works.

More information on value creation and capture can be accessed online at:

<https://www.vic.gov.au/value-creation-and-capture-framework>

## 7.1.7 SUPPLIER CODE OF CONDUCT

The State is committed to ethical, sustainable and socially responsible procurement.

The Supplier Code of Conduct was developed to ensure that contracted government services are provided to suppliers that meet a set of minimum ethical standards.

The Supplier Code of Conduct clearly articulates the State's values and expectations of suppliers, and obtains supplier support to meet a minimum standard of ethical behaviour in the areas of:

- integrity, ethics and conduct;
- conflict of interest, gifts, benefits and hospitality;
- corporate governance;
- labour and human rights;
- health and safety; and
- environmental management.

The State views its suppliers as partners and cares about the way they do business when providing goods or services, including construction works and services, to the State.

The State seeks to work with its suppliers to meet and exceed minimum expectations as outlined in the Supplier Code of Conduct and continuously strives to improve the standard of its business practices.

The Supplier Code of Conduct is applicable to all general government sector contracts, agreements and orders for the supply of goods and services, and construction works and services from 1 July 2017.

The Supplier Code of Conduct require minimal administrative changes by suppliers as it is consistent with current legislative requirements and complements current procurement practice. The Supplier Code of Conduct provides guidance and advice for suppliers to report instances of misconduct, unethical behaviour or suspected corruption or if a State employee has breached the Victorian public sector code.

Since 1 July 2017, all new contractual arrangements require suppliers to acknowledge the Supplier Code of Conduct by signing and returning the commitment letter provided at Appendix C of Volume 1B.

Suppliers are obligated to communicate the Supplier Code of Conduct to related entities, its suppliers and subcontractors who support them in supplying goods and services.

More information regarding the Supplier Code of Conduct can be found at:

<https://www.buyingfor.vic.gov.au/supplier-code-conduct>

### 7.1.8 RECYCLED FIRST POLICY

The Victorian Government is committed to optimising the use of recycled and reused Victorian materials across all road and rail construction through the *Recycled First* Policy.

In February 2020, the Victorian Government released its ten-year plan to reform Victoria's waste and recycling sector. The Recycled First Policy includes a circular economy plan that will see Victoria change how it uses its resources by transitioning from a make-use-dispose model to a make-use-reuse-repair-recycle model.

The Victorian Government's desire is to build greener infrastructure by significantly increasing the reuse of waste materials in construction and to become a world leader in the reuse of waste in construction. It is committed to optimising the use of recycled materials and reused materials across all road and rail construction through the implementation of the *Recycled First* Policy.

The Recycled First Policy supports a circular economy by ensuring that, where appropriate, recycled and reused materials are used in preference to virgin materials, to drive greater use of such materials, encourage innovation and develop a new viable market for those materials.

The Recycled First Key Principles are to:

- optimise the use of recycled materials and reused materials on Victorian transport infrastructure projects;
- drive the supply, demand, technical development and application of reused and recycled products;
- provide data on recycled materials and reused materials to help inform a better understanding of the supply chain, market development issues and opportunities and future recycling infrastructure need;
- help achieve sustainable outcomes for transport infrastructure projects; and
- support the initiatives of the Recycling Victoria Policy.

The *Recycled First* Policy requires Shortlisted Respondents to consider the use of recycled and reused materials in preference to virgin materials, at all levels accepted under current standards and specifications, as part of its Project Proposal.

As part of the RFP Phase, Shortlisted Respondents will be required to prepare a detailed Recycled First Plan that will describe and document the Shortlisted Respondent's Recycled First approach and Recycled First Commitments. The Successful Proponent will be required to report progress against the Recycled First Commitments during delivery of the Project, through monthly submission of a Recycled First Report. Shortlisted Respondents will also be encouraged to identify Recycled First innovations and, where appropriate, propose priced options for consideration by the State.

The Alliance's performance against the *Recycled First* Policy will be measured as part of the Risk or Reward Regime as set out in Schedule 8 of the draft PAA.

## 7.2 COMMONWEALTH REQUIREMENTS

### 7.2.1 BUILDING CODE

As part of EOI Mandatory Criterion 1, each Respondent must advise if it is capable of complying with the Code for the Tendering and Performance of Building Work 2016 (**Building Code**), which is a code of practice made under the *Building and Construction Industry (Improvement Productivity) Act 2016* (Cth), and if it is not currently capable, whether it will be capable at the date of contract award.

The Pre-qualified Respondent (and each Member) is only permitted to participate in this Invitation for EOI in respect of the Commonwealth funded building work where it is not subject to an exclusion sanction and provides a Declaration of Compliance with their EOI Response. There are also obligations that apply during the Procurement Process in relation to the:

- submission of a Workplace Relations Management Plan (**WRMP**) – During the RFP Phase, Shortlisted Respondents will be required to submit a WRMP as part of their Project Proposal for approval by the Australian Building and Construction Commission (**ABCC**) in accordance with Part 6 of the Building Code;
- provision of information by the Preferred Proponent before the contract is awarded; and
- content of contracts between the Successful Proponent and subcontractors.

Pre-qualified Respondents (and each Member) should note that all subcontractors are only permitted to participate in Commonwealth funded building work where the subcontractor is compliant with the Building Code. During the RFP Phase, Shortlisted Respondents will be required to confirm subcontractors' compliance with the Building Code.

More information regarding the Building Code can be accessed online at:  
<https://www.legislation.gov.au/Details/F2017C00668>.

### 7.2.2 AUSTRALIAN GOVERNMENT BUILDING AND CONSTRUCTION WHS ACCREDITATION SCHEME

The Australian Government is committed to improving WHS outcomes in the building and construction industry. An important initiative to achieve this is the WHS Accreditation Scheme, established by the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth) and specified in the *Building and Construction Industry (Improving Productivity) (Accreditation Scheme) Rules 2019* (Cth).

The WHS Accreditation Scheme applies to certain directly funded building work and certain indirectly funded building work (including building work for state and territory governments wholly or partly funded through Australian Government grants and other programs).

The WHS Accreditation Scheme applies to the Project and the associated building works described in this Invitation for EOI.

The Successful Proponent must be accredited under the WHS Accreditation Scheme at the time of entering into the PAA and must maintain accreditation while the building work is being carried out. The Successful Proponent must comply with all conditions of the WHS Accreditation Scheme. There are also requirements to comply with the National Construction Code performance requirements in relation to building materials.

Respondents are requested to note the specific provisions in section 26(g) of the *Building and Construction Industry (Improving Productivity) (Accreditation Scheme) Rules 2019* (Cth) applicable to joint venture arrangements which include accredited and unaccredited builders/persons.

As part of the EOI Mandatory Criterion 1, the Respondent must provide:

- (a) evidence that the Respondent is accredited under the WHS Accreditation Scheme, including expiry dates (if the Respondent is currently accredited);
- (b) evidence that the Respondent complies with the specific provisions in section 26(g) of the *Building and Construction Industry (Improving Productivity) (Accreditation Scheme) Rules 2019* (Cth) applicable to joint venture arrangements which include accredited and unaccredited builders/persons; or
- (c) details of all steps the Respondent has taken or will take to ensure the Respondent will achieve WHS Accreditation Scheme accreditation or comply with section 26(g) of the *Building and Construction*

*Industry (Improving Productivity) (Accreditation Scheme) Rules 2019* (Cth) before executing the PAA (if selected as the Successful Proponent).

More information regarding the WHS Accreditation Scheme can be accessed online at:

<https://www.fsc.gov.au/what-accreditation-1>.

### 7.2.3 NATIONAL PARTNERSHIP AGREEMENT ON LAND AND TRANSPORT PROJECTS

The Project is being delivered under the NPA, which was entered into between the Commonwealth and each of the State and Territories in 2019.

The NPA relates to infrastructure projects administered under the *National Land Transport Act 2014* (Cth).

The Successful Proponent will need to comply with obligations under the NPA to, among other things, provide requested information relevant to the progress of the Project, comply with reporting requirements and deliver the Project in accordance with prescribed standards.

A copy of the NPA can be accessed online at:

[http://www.federalfinancialrelations.gov.au/content/npa/infrastructure/national-partnership/Land\\_Transport\\_Infrastructure.pdf](http://www.federalfinancialrelations.gov.au/content/npa/infrastructure/national-partnership/Land_Transport_Infrastructure.pdf).

### 7.2.4 INDIGENOUS EMPLOYMENT AND SUPPLIER-USE INFRASTRUCTURE FRAMEWORK

The Commonwealth's Indigenous Employment and Supplier-Use Infrastructure Framework came into effect on 1 July 2019 and applies to projects that receive \$7.5m or more in Australian Government contributions through the major road and rail investment program under the NPA.

The Framework sets out a whole-of-government approach to increase opportunities for Indigenous job-seekers and businesses participation in the delivery of government-funded land transport infrastructure projects. The Framework requires that RPV develop and submit an Indigenous Participation Plan for all relevant projects prior to commencing the formal tender process.

Respondent requirements generally reside within the scope of State requirements (Aboriginal Employment Target and Social Procurement Framework sections of this Invitation for EOI), however Shortlisted Respondents may be required to respond to targets set in the Commonwealth Indigenous Participation Plan. RPV will provide further guidance at the RFP Phase.

Further information regarding the Indigenous Employment and Supplier-use Infrastructure Framework can be found online at:

[https://investment.infrastructure.gov.au/about/resources/national\\_partnership\\_agreement.aspx](https://investment.infrastructure.gov.au/about/resources/national_partnership_agreement.aspx).

A copy of the Indigenous Employment and Supplier-use Infrastructure Framework can be accessed online at:

[https://investment.infrastructure.gov.au/files/Indigenous\\_Employment\\_and\\_Supplier-use\\_Infrastructure\\_Framework.pdf](https://investment.infrastructure.gov.au/files/Indigenous_Employment_and_Supplier-use_Infrastructure_Framework.pdf).

### 7.2.5 MODERN SLAVERY LEGISLATION

The Commonwealth Government is taking a global leadership role in combating modern slavery. Modern slavery describes situations where offenders use coercion, threats or deception to exploit victims and undermine their freedom. The *Modern Slavery Act 2018* (Cth) entered into force on 1 January 2019. The draft PAA contains terms, based on the Commonwealth Government's model clauses, which aim to ensure suppliers respond to modern slavery risks and support the Government's efforts to address modern slavery.

## 8. EVALUATION

### 8.1 EVALUATION APPROACH

EOI Responses will be assessed by an Evaluation Panel. The Evaluation Panel will consist of appropriately experienced personnel and will be supported by commercial, legal, technical and other support advisers, internal and external to RPV, as required.

The Project Objectives have informed the EOI Evaluation Criteria. The Evaluation Panel will consider the EOI Responses provided by each Pre-qualified Respondent against the criteria in sections 8.3 and 8.4.

In addition to the EOI Response, the Evaluation Panel may seek clarifications from Respondents, interview Respondents, refer to other performance information and/or undertake referee checks. In accordance with the Terms and Conditions, RPV may also have regard to information obtained through its own investigations.

### 8.2 INFORMATION REQUIRED

Pre-qualified Respondents are requested to ensure their EOI Response reflects the structure set out in, and contains the information requested by, the EOI Returnable Schedules (Volume 1B of this Invitation for EOI), consisting of the General Returnable Schedules, EOI Mandatory Evaluation Criteria Returnable Schedules and EOI Comparative Evaluation Criteria Returnable Schedules. Where page limits have not been specified, Respondents are requested to provide concise EOI Responses that clearly address the information requested. It is permissible to include appendices to the main body of the EOI Response, but this material will be included in the page limits specified, and pages that exceed the specified page limits may be disregarded.

### 8.3 EOI MANDATORY EVALUATION CRITERIA

Each Pre-qualified Respondent must demonstrate its capacity to comply with the EOI Mandatory Evaluation Criteria listed in Table 8-1. RPV may decide not to conduct a detailed assessment of a Pre-qualified Respondent's EOI Response under the EOI Comparative Evaluation Criteria if that Pre-qualified Respondent does not fully comply with these EOI Mandatory Evaluation Criteria.

Table 8-1 EOI Mandatory Evaluation Criteria

Mandatory Evaluation Criteria	Definition	Reference
<b>Mandatory Criterion 1:</b> Compliance with State and Commonwealth policy requirements	Assessment of the Respondent and each Member's compliance or ability to comply with the State and Commonwealth requirements set out in Returnable Schedule 6, including: <ul style="list-style-type: none"><li>• Ministerial Directions and Instructions for Public Construction Procurement in Victoria;</li><li>• Supplier Code of Conduct;</li><li>• Code for the Tendering and Performance of Building Work 2016 (<b>Building Code</b>); and</li><li>• Australian Government Building and Construction WHS Accreditation Scheme prior to the execution of the PAA.</li></ul>	Volume 1B – Returnable Schedule 6

Mandatory Evaluation Criteria	Definition	Reference
<b>Mandatory Criterion 2:</b> Financial strength	The Respondent and each Member is solvent, and the Respondent is assessed (either in its own right or with reference to a Parent Company if applicable) as having the financial strength and capacity to deliver the Works.	Volume 1B – Returnable Schedule 7

## 8.4 EOI COMPARATIVE EVALUATION CRITERIA

The EOI Comparative Evaluation Criteria are listed in Table 8-2. The EOI Comparative Evaluation Criteria in Table 8-2 are listed in order of importance relative to the criteria assessment weighting (noting some criteria are weighted equally).

Table 8-2 EOI Comparative Evaluation Criteria

Comparative Evaluation Criteria	Definition	Reference
<b>Comparative Criterion 1:</b> Proposed team	An assessment of the Respondent's: <ul style="list-style-type: none"> <li>• consortium structure and team composition in the context of the scale and complexity of the Project;</li> <li>• experience and availability of key personnel (including ALT, Alliance Manager and AMT members) for the remainder of the procurement phase and delivery of the Works;</li> <li>• approach to working with Alliance Participants, including V/Line, in a collaborative environment; and</li> <li>• demonstrated integrity, industry standing and success working with government (including referees for the purpose of detailed reference checks).</li> </ul>	Volume 1B – Returnable Schedule 8

Comparative Evaluation Criteria	Definition	Reference
<p><b>Comparative Criterion 2:</b> Relevant project experience and track record</p>	<p>Assessment of the project experience, track record and capacity of the Respondent and each Member, including:</p> <ul style="list-style-type: none"> <li>• recent project experience in leading, designing and delivering projects of this nature (including any key lessons learnt which can be applied to the Works);</li> <li>• recent experience working on regional Victoria's rail network and within regional centres (including with key stakeholders and existing rail network infrastructure and systems);</li> <li>• the proposed approach to leveraging each Member's experience for the benefit of the Alliance, including the extent of each Member's experience in working together with other Members and with V/Line on similar projects;</li> <li>• the successful integration of sustainability requirements into the design and into the delivery of a brownfields rail project; and</li> <li>• managing complex land, planning and environment issues and approval processes.</li> </ul>	<p>Volume 1B – Returnable Schedule 9</p>
<p><b>Comparative Criterion 3:</b> Understanding and approach</p>	<p>An assessment of the Respondent's understanding of, and approach to, the delivery of the Works with respect to:</p> <ul style="list-style-type: none"> <li>• design, construction (including methodology and occupation strategy), testing, commissioning and integration of the Works, including an indicative program;</li> <li>• the rail systems works on the rail corridor, including the proposed signalling solution and consideration of interfaces with existing signalling technologies;</li> <li>• identification and management of key interfaces with other projects, including proposed mitigation strategies for minimising associated interface risks;</li> <li>• engaging with the community and key stakeholders, particularly with respect to minimising disruption from the Works; and</li> <li>• identifying and managing risks and opportunities throughout the project delivery.</li> </ul>	<p>Volume 1B – Returnable Schedule 10</p>

Comparative Evaluation Criteria	Definition	Reference
<p><b>Comparative Criterion 4:</b> Commercial proposition</p>	<p>An assessment of the Respondent and each Member's:</p> <ul style="list-style-type: none"> <li>• acceptance of the draft commercial framework and legal framework, including ADA and PAA; and</li> <li>• proposed commercial solution, including commercial structure, allocation of risk and reward and RCMs.</li> </ul>	<p>Volume 1B – Returnable Schedule 11</p>
<p><b>Comparative Criterion 5:</b> Safety, sustainability and environment</p>	<p>Assessment of the Respondent and each Member's (as applicable) capability, experience and proposed approach to safety, sustainability and environment requirements in a rail environment, including:</p> <ul style="list-style-type: none"> <li>• an overview of relevant experience and proposed approach to safety on the Works;</li> <li>• the relevant approach to managing the Rail Safety National Law requirements in delivering the Works;</li> <li>• the relevant independent certification of occupational health and safety management systems;</li> <li>• land, planning and environment and sustainability approach and capacity;</li> <li>• approach to urban design;</li> <li>• the relevant accreditation of environmental management systems; and</li> <li>• safety and environmental management track record, including corporate environmental performance.</li> </ul>	<p>Volume 1B – Returnable Schedule 12</p>

## 9. GENERAL

### 9.1 TERMS AND CONDITIONS

The Terms and Conditions apply to the whole of the Procurement Process and are provided in Appendix B of this Volume 1A. Subject to the Terms and Conditions, a process contract arises between RPV and the Respondent on and from the release of the Invitation for EOI.

RPV reserves the right to amend the Terms and Conditions or impose additional terms and conditions applicable to the Procurement Process on Shortlisted Respondents and the Preferred Proponent.

### 9.2 RPV PROBITY ADVISER

RPV has appointed O'Connor Marsden and Associates as the probity adviser (**Probity Adviser**) for this Procurement Process. Where a Pre-qualified Respondent has a concern in relation to probity or the conduct of the Procurement Process, it may, at the first instance, contact the Probity Adviser by email at the address set out below:

**Rory O'Connor**

**Partner**

**O'Connor Marsden and Associates**

**Mob: 0416 107 627**

**E: [rpv@ocm.net.au](mailto:rpv@ocm.net.au)**

The Pre-qualified Respondent should provide details of:

- the proposed probity issue or concern;
- how the probity issue or concern impacts on the Pre-qualified Respondent's interest;
- any relevant background information; and
- the Pre-qualified Respondent's proposal for the resolution of the probity issue or concern.

Any contact or communication with the Probity Adviser will be disclosed by the Probity Adviser to RPV.

### 9.3 RPV PROBITY AUDITOR

RPV has appointed Pitcher Partners Consulting Pty Ltd as the probity auditor (**Probity Auditor**) for this Procurement Process. The Probity Auditor undertakes an independent examination and validation of documentation, process and associated activities at the conclusion of the Procurement Process in relation to the:

- consistent application of tender requirements, processes and documentation;
- transparency of the Procurement Process;
- fairness and impartiality in the treatment of Respondents;
- identification and management of actual, potential and perceived conflicts of interest;
- identification and management of probity issues arising in the course of the Procurement Process; and
- maintenance of confidentiality and security of documentation and information.

## **9.4 COMMUNICATIONS**

During the EOI Phase, Pre-qualified Respondents must submit all enquiries and clarification questions in relation to this Invitation for EOI in writing via the EDR by the Clarification Closing Time and Date. Pre-qualified Respondents must not communicate with any RPV representatives other than via the written process set out in this section. Refer to the Terms and Conditions of this Invitation for EOI for further information.

Pre-qualified Respondents should note that responses to clarification questions and any addenda will be made available to all Pre-qualified Respondents via the EDR, subject to the paragraph below.

If a Pre-qualified Respondent is of the view that a clarification question relates to proprietary aspects of their EOI Response, the Pre-qualified Respondent may identify that question as such. If RPV agrees that a question or issue relates to proprietary aspects of their EOI Response, the response will not be made available to other Pre-qualified Respondents. If, however, RPV is of the view that the question or issue is not proprietary, RPV will advise the relevant Pre-qualified Respondent who will then have the option to withdraw the question (if applicable). If the Pre-qualified Respondent continues to request a response to a clarification question, the clarification question and RPV response will be made available to all Pre-qualified Respondents.

## **9.5 LODGEMENT DETAILS**

A Pre-qualified Respondent must submit their EOI Response electronically via the EDR by the EOI Closing Time and Date outlined in Table 1-2.

Submissions must be consistent with the Returnable Schedules structure. Submissions are required in searchable PDF format; files in native format (e.g. Word, Excel, etc.) are only required if specified in the Returnable Schedules.

RPV may, by written notice, extend the EOI Closing Time and Date for submission of EOI Responses.

In accordance with the Terms and Conditions, RPV reserves its right, at its absolute discretion, to accept or reject any EOI Responses lodged after this time.

# APPENDIX A: GLOSSARY AND ACRONYMS

## GLOSSARY

The definitions of the capitalised terms used in this document are set out below. Where terms are also defined in the draft PAA, the relevant definitions may be further developed and updated by way of the draft PAA. Capitalised terms used in this document that are not defined in this Appendix A may, where applicable, have the meaning given in the draft PAA and draft ADA.

Term	Definition
ABCC Act	the <i>Building and Construction Industry (Improving Productivity) Act 2016</i> (Cth).
Aboriginal Employment Target	has the meaning given in section 7.1.4 .
Advance Tender Notice	a notice issued by RPV providing information regarding the Project (at the time, packaged as the Project) at the beginning of the Pre-qualification Process.
Alliance	the alliance to be created pursuant to the PAA to perform the Works and achieve the requirements of the VFM Statement, comprising: <ul style="list-style-type: none"> <li>• RPV;</li> <li>• V/Line; and</li> <li>• Members of the Successful Proponent.</li> </ul>
Alliance Charter	the alliance charter (including the Alliance Principles, Alliance Purpose and Alliance Objectives) for the performance of the Works, to be set out in the PAA, that together with the other terms of the PAA is to govern the relationship between the Alliance Participants under the PAA.
Alliance Development Agreement or ADA	the alliance development agreement to be entered into by RPV and each Shortlisted Respondent, as described in section 5.2.3.
Alliance Leadership Team or ALT	the Alliance leadership team to be established under the PAA, as described in section 4.3.2.
Alliance Management Team or AMT	the Alliance management team to be established under the PAA, as described in section 4.3.4.
Alliance Manager	the Alliance manager to be appointed under the PAA, as described in section 4.3.3.
Alliance Objectives	the overarching objectives for the Alliance described in section 2.2.
Alliance Participants	RPV (in its capacity as Owner Participant), V/Line and Members of the Successful Proponent, who enter into the relevant PAA.
Alliance Principles	the principles described in section 5.1.
Alliance Purpose	to achieve the requirements of the VFM Statement.
Alliance Project Team or APT	the Alliance Project Team to be established under the PAA, as described in section 4.3.5.
Approval	any consent, registration, filing, agreement, notarisation, certificate, licence, approval, permit, authority or exemption from, by or with a Government Agency or any third party.
As Built	construction drawings or documents as required by PTV's design management system, which illustrate the final design and structure of the Works.

Term	Definition
Associate	<p>for the purposes of this Invitation for EOI, includes:</p> <ul style="list-style-type: none"> <li>• in relation to RPV: <ul style="list-style-type: none"> <li>i MTIA, the State and any other Government Agency; and</li> <li>ii any director, officer, employee, agent, contractor, consultant, nominee, licensee, secondee or adviser to RPV, the State, or any other Government Agency, but excludes any Interested Party, Respondent or Member; and</li> </ul> </li> <li>• in relation to an Interested Party, a Respondent or a Member, any: <ul style="list-style-type: none"> <li>i Related Party or Holding Company; and</li> <li>ii officer, employee, agent, contractor, consultant, nominee, licensee, secondee or adviser,</li> </ul> </li> <li>• of the Interested Party, the Member or the Respondent (or any of their Related Parties and Holding Companies), other than RPV or any of its Associates.</li> </ul>
Associate Obligations	has the meaning given in clause 7.2 of the Terms and Conditions.
'Baseline' Corporate Overhead and Profit	has the meaning given in section 5.2.2.
'Baseline' RCMs	has the meaning given in section 5.2.2.
Building Code	the <i>Code for the Tendering and Performance of Building Work 2016</i> , made under the <i>Building and Construction Industry (Improving Productivity) Act 2016</i> (Cth).
Claim	<p>any claim, proceeding, action, cause of action, demand or suit (including by way of contribution or indemnity) made:</p> <ul style="list-style-type: none"> <li>• in connection with the Disclosed Information or the Project;</li> <li>• at Law or in equity; or</li> </ul> <p>for specific performance, restitution, payment of money (including damages), an extension of time or any other form of relief.</p>
Clarification Closing Time and Date	the closing date for clarifications under this Invitation for EOI, as set out in section 1.4, as may be extended by RPV by written notice.
Commercial Framework	the combination of the Reimbursable Costs, the Corporate Overhead and Profit, and the Risk or Reward Regime to be set out in Schedules 6, 7 and 8 of the PAA.
Commercial Framework Overview	the paper provided in the EDR that summarises the draft Commercial Framework.
Commercial Principles	the commercial principles on which RPV intends to contract with the Successful Proponent for the delivery of the Project, as outlined in section 5.2.1.
Commonwealth or Commonwealth Government	the Commonwealth of Australia.
Competing Respondent	any party, or group of parties together, that provide, or intend to provide, an EOI Response, other than the Respondent.
'Competitively Bid' Corporate Overhead and Profit	has the meaning given in section 5.2.2.
'Competitively Bid' RCMs	has the meaning given in section 5.2.2.

Term	Definition
Construction Environmental Management Plan or CEMP	the construction environmental management plan to be developed by the Alliance Participants in accordance with the Project Management Requirements.
Corporate Confidentiality Undertaking	has the meaning given in the Pre-qualification Document.
Corporate Overhead and Profit	has the meaning given in section 5.2.2.
Declaration of Compliance	the declaration of compliance with the Building Code that must be signed and submitted by each Respondent (and each Member) as detailed in Appendix D of Volume 1B of this Invitation of EOI.
Department of Transport	the department responsible for the transport portfolio within the Victorian government, as contemplated under the <i>Transport Integration Act 2010</i> (Vic).
Disabling Code	any computer software known as a back door, time bomb, logic bomb, trojan horse, worm, drop dead device, virus, or any other computer software or configuration intended or designed to: <ul style="list-style-type: none"> <li>• permit access to or use of the computer systems or associated data of a Member other than as expressly authorised by the Member; or</li> <li>• disable, damage, corrupt or erase, or disrupt or impair the normal operation of, computer systems or associated data of a Member.</li> </ul>
Disclosed Information	all information of whatever nature and in whatever form which is disclosed by RPV or any of its Associates, including: <ul style="list-style-type: none"> <li>• all documentation issued in connection with this Invitation for EOI;</li> <li>• all material disclosed in presentations by or on behalf of RPV or any of its Associates in connection with the Project;</li> <li>• all material disclosed in discussions, documentation, materials and negotiations between RPV and a Respondent (or its Associates) relating to the Project; and</li> <li>• any other information disclosed by RPV or any of its Associates, whether oral, visual, written or recorded in any other medium (including all information contained on the EDR, CD Rom or any other form of electronic storage device (e.g. USB stick)).</li> </ul>
Electronic Data Room or EDR	an internet based repository that will be made available to Pre-qualified Respondents.
Environment Effects Statement or EES	an assessment of the potential environmental impacts or effects of a proposed development required under the <i>Environment Effects Act 1978</i> (Vic).
Environmental Management Framework or EMF	the environmental management framework described in section 2.13.3.
Environmental Management Requirements or EMR	the environmental management requirements described in section 2.13.3.
Environmental Management System or EMS	the environmental management system described in section 2.13.4.
Environmental Performance Requirements or EPR	the environmental performance requirements described in section 2.13.3.
EOI Closing Time and Date	the closing time and date for submission of EOI Responses, as set out in section 1.4.4.
EOI Comparative Evaluation Criteria	the evaluation criteria described in section 8.4.

Term	Definition
EOI Evaluation Criteria	means the EOI Comparative Evaluation Criteria and EOI Mandatory Evaluation Criteria.
EOI Mandatory Evaluation Criteria	the evaluation criteria described in section 8.3.
EOI Phase	the stage of the Procurement Process described in section 6.3.
EOI Response	a response developed and submitted by a Pre-qualified Respondent in response to this Invitation for EOI.
EPBC Act	the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth).
Evaluation Panel	the team selected by RPV to evaluate EOI Responses and make recommendations in relation to the selection of Shortlisted Respondents.
Final Completion	has the meaning given in the draft PAA.
Geelong Line	the rail line from Geelong Station to the Waurn Ponds Stabling Facility (when completed).
Government Agency	any government, parliament or governmental, semi-governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal or government minister (including any agency or entity related to the above).
Health and Safety Laws	<p>all safety related:</p> <ul style="list-style-type: none"> <li>• Laws;</li> <li>• codes of practice;</li> <li>• other compliance codes;</li> <li>• directions on safety or notices issues by any relevant Government Agency; and</li> <li>• standards,</li> </ul> <p>relevant and applicable to any part of the Works and includes the <i>Occupational Health and Safety Act 2004</i> (Vic), the <i>Heavy Vehicle National Law Application Act 2013</i> (Vic), the Rail Safety National Law and the <i>Electricity Safety Act 1998</i> (Vic) and associated regulations to any applicable Acts as amended from time to time.</p>
Heritage Victoria	the Victorian Government's principal cultural (non-Aboriginal) heritage agency.
Holding Company	has the meaning given in section 9 of the <i>Corporations Act 2001</i> (Cth).
Intellectual Property Rights	all intellectual property rights existing worldwide and the subject matter of such rights, including any patent, design (whether registered or not), copyright, trade mark, protected circuit layout (or similar right) trade secret or other right, whether existing under a statutory requirement, at common law or in equity.
Interactive Process	the process of interaction between Shortlisted Respondents or the Preferred Proponent (as applicable) and key State Stakeholders during the RFP Phase.
Interactive Process Guide	a guide in respect of the Interactive Process to be provided by RPV.
Interested Party	a party that is interested in submitting an EOI Response (whether alone or in a group together with any other Interested Parties), including parties that have satisfied the Pre-qualification Requirements and have access to the EDR.

Term	Definition
Invitation for EOI	this document containing an invitation for expressions of interest in forming an alliance to carry out the Project and perform the Works, including its appendices and attachments, and as amended or supplemented from time to time in accordance with clause 8.6 of the Terms and Conditions.
Key Performance Indicator or KPI	each key performance indicator in respect of a KRA, set out in the Risk or Reward Regime under the draft PAA.
Key Result Area or KRA	key result areas for measurement of performance under the PAA, as defined in the VFM Statement.
Law	the principles of common law and equity established by decisions of courts, all other statutes, regulations, by-laws, ordinances and subordinate legislation of the Commonwealth, the State or any Government Agency, and any Approvals.
Legal Framework	for each Project, the suite of documents comprising the ADA and the PAA.
Liability	any loss, cost, liability or expense whether: <ul style="list-style-type: none"> <li>• arising from or in connection with any proceeding or Claim or not;</li> <li>• liquidated or not;</li> <li>• legal or equitable;</li> <li>• present, prospective or contingent; or</li> <li>• owed, incurred or imposed by or to or on account of or for the account of any person alone or severally or jointly with another or others.</li> </ul>
Local Industry Development Plan or LIDP	for each Project, a plan to be developed by Shortlisted Respondents during the RFP Phase as described in section 7.1.2.
Local Jobs First Policy or LJF Policy	the State policy as described in section 7.1.2.
Local Learning and Employment Networks or LLEN	a Victorian initiative that networks with families, schools, and employers to help disengaged youth find valuable education, training, and employment pathways.
Major Projects Skills Guarantee or MPSG	the workforce development policy designed to ensure job opportunities for apprentices, trainees and cadets on Victorian Government construction projects, forming part of the Local Jobs First Policy, as established under section 4 of the <i>Local Jobs First Act 2003 (Vic)</i> .
Major Transport Infrastructure Authority or MTIA	an administrative office established in relation to the Department of Transport under the <i>Public Administration Act 2004 (Vic)</i> .
MCOS Performance	the benchmark level of performance for the minimum conditions of satisfaction in respect of each KRA, as defined under the Risk or Reward Regime.
Member	a person or other legal entity who, either in its own right or together with other persons or legal entities, forms a Respondent (whether as part of an incorporated or unincorporated entity).
Minimum Conditions of Satisfaction or MCOS	the minimum conditions that must be met in respect of each KRA to meet the requirements of the VFM Statement.
Ministerial Directions	the 'Ministerial Directions for Public Construction Procurement in Victoria' issued in accordance with the <i>Project Development and Construction Management Act 1994 (Vic)</i> , effective 1 July 2018.
Ministerial Instructions	the 'Instructions for Public Construction Procurement in Victoria', associated with the Ministerial Directions.

Term	Definition
National Partnership Agreement on Land Transport Infrastructure Projects or NPA	the National Partnership Agreement on Land Transport Infrastructure Projects. The NPA sets out the Commonwealth investment priorities for infrastructure projects and relates to projects administered under the <i>National Land Transport Act 2014</i> (Cth).
Non-Owner Participant or NOP	each Member of the Successful Proponent that enters into the PAA.
Office of the National Rail Safety Regulator or ONRSR	the Office of the National Rail Safety Regulator or any other regulator appointed under the Rail Safety National Law from time to time.
Owner Participant	RPV, in its capacity as an Alliance Participant for the performance of the Works under the PAA.
Permitted Purpose	to: <ul style="list-style-type: none"> <li>• submit an EOI Response or any Proposals (or consider and determine whether or not to submit an EOI Response or any Proposals) in accordance with the Terms and Conditions; or</li> <li>• comply with an obligation under the Invitation for EOI or the RFP.</li> </ul>
Preferred Project Proposal	the detailed, binding submission made by the Preferred Proponent as part of the Preferred Project Proposal sub-phase during the RFP Phase in accordance with the ADA as described in section 1.4.3.
Preferred Proponent	the Shortlisted Respondent that is invited to proceed to the second sub-phase of the RFP Phase, to collaboratively develop a Preferred Project Proposal (as the 'Preferred Respondent' under the ADA).
Pre-qualification Document	the pre-qualification document for this Invitation for EOI released to Interested Parties on the Vic Tender website.
Pre-qualification Phase	the stage of the Procurement Process described in section 1.4.1 and 6.2.
Pre-qualification Process	the process for the Pre-qualification Phase (as described in section 1.4.1 and the Pre-qualification Document).
Pre-qualification Requirements	the requirements set out in the Pre-qualification Document that must be satisfied in order for Interested Parties to access the EDR and subsequently submit an EOI Response.
Pre-qualification Response	a response developed and submitted by an Interested Party in response to the Pre-qualification Document.
Pre-qualified Respondent	an Interested Party who submits (or group of Interested Parties who together submit) a Pre-qualification Response to RPV, is assessed by RPV as satisfying the Pre-qualification Requirements and subsequently receives notification by RPV that it has successfully pre-qualified.
Primary Authorisations	has the meaning given in section 2.13.5.
Principal Contractor	the entity appointed as 'principal contractor' within the meaning given in the <i>Occupational Health and Safety Regulations 2017</i> (Vic).
Priority Jobseekers	a Victorian resident to which one (or more) of the following apply: <ol style="list-style-type: none"> <li>1 <i>long-term unemployed</i> – a Victorian resident who has been unemployed for at least six months, prior to commencing work on the project (excluding people undertaking studies). A person may be long-term unemployed due to barriers to employment including the following: <ol style="list-style-type: none"> <li>a) a person from a culturally diverse community;</li> <li>b) a person with a mental illness;</li> <li>c) a person with a physical disability;</li> </ol> </li> </ol>

Term	Definition
	<ul style="list-style-type: none"> <li>d) Aboriginal or Torres Strait Islander;</li> <li>e) ex-offender;</li> <li>f) mature-aged (50+);</li> <li>g) migrant;</li> <li>h) refugee;</li> <li>i) single parent;</li> <li>j) social housing tenant;</li> <li>k) veteran and their families;</li> </ul> <p>2 <i>disengaged youth</i> – a person aged 15-24 years, who is not studying or training and is seeking full-time work;</p> <p>3 <i>worker in transition</i> – a jobseeker who has been recently retrenched or facing pending retrenchment due to business closures or industry transition including any jobseeker who has registered on the Working for Victoria platform; or</p> <p>4 <i>participant in employment program</i> – a person participating in a program that targets employment of people with significant barriers to employment (as agreed with RPV), including the CareerSeekers and CareerTrackers programs.</p>
Probity Adviser	the probity adviser referred to in section 9.2.
Probity Auditor	the probity auditor referred to in section 9.3.
Probity Checks	has the meaning given in clause 15.5(a) of the Terms and Conditions.
Procurement Process	the process described collectively by the Pre-qualification Document, this Invitation for EOI, the RFP, the ADA, the draft PAA, and any addenda issued in relation to these documents for the procurement of the Project.
Project	the South Geelong to Waurn Ponds Duplication project.
Project Alliance Agreement or PAA	the agreement for the delivery of the Project, as described in section 5.2.3.
Project Management Requirements	the project management requirements for the Project, as set out under the draft PS&TR.
Project Objectives	the objectives described in section 2.3 as may be further updated and finalised in the PAA.
Project Proposal	the detailed, binding submission made by each Shortlisted Respondent as part of the Project Proposal sub-phase during the RFP Phase in accordance with the ADA as described in section 1.4.3.
Project Scope and Technical Requirements or PS&TR	the project scope and technical requirements for the delivery of the Project to be set out in the PAA.
Proposal	Project Proposal or Preferred Project Proposal, as applicable.
Public Disclosure Obligations	has the meaning given under clause 9.2(a) of the Terms and Conditions.
Rail Projects Victoria or RPV	a division of the Major Transport Infrastructure Authority, responsible for delivery the Project.
Rail Safety National Law	has the meaning given in the <i>Rail Safety National Law (South Australia) Act 2012</i> (SA).

Term	Definition
Rail Transport Operator or RTO	has the meaning given in the Rail Safety National Law (as, in the context of the Project, relates to the entity or entities which contribute to the maintenance and operation of the Victorian rail network (e.g. VicTrack, V/Line and relevant freight operators).
Registered Aboriginal Party or RAP	has the meaning given in the <i>Aboriginal Heritage Act 2006</i> (Vic).
Reimbursable Cost Multiplier or RCM	fixed rate multipliers used to reimburse employment related on costs for non-wages personnel.
Reimbursable Costs	the costs described in section 5.2.2.
Related Member	a Member who is a Related Party of a Member of any Competing Respondent.
Related Party	has the meaning given to the expressions: <ul style="list-style-type: none"> <li>• 'Related Party' by section 8; and</li> <li>• 'Related Bodies Corporate' by section 50,</li> </ul> of the <i>Corporations Act 2001</i> (Cth) and includes any 'associate' (as defined by sections 10 to 17 of the <i>Corporations Act 2001</i> (Cth)) of a person.
Related State Projects	the projects detailed in section 2.11.
Request for Proposal or RFP	the document(s) issued by RPV for the purposes of requesting Project Proposals from Shortlisted Respondents and (if required by RPV) a Preferred Project Proposal from the Preferred Proponent.
Respondent	a person, legal entity or body corporate who, either in their own right or on behalf of a proposed or established consortium of Members, submits an EOI Response.
Returnable Schedules	the schedules set out in Volume 1B of this Invitation for EOI that provide instructions to Interested Parties outlining the specific information to be provided in their EOI Response.
RFP Evaluation Criteria	the collective term referring to the criteria used to evaluate the Project Proposals and Preferred Project Proposal(s), including mandatory and comparative evaluation criteria as developed by RPV and provided in the RFP.
RFP Phase	the phase of the Procurement Process as described in sections 1.4.3 and 6.4 of this Invitation for EOI (as amended from time to time) and as set out in the ADA.
Risk or Reward Regime	the regime described in section 5.2.2.
RPV Advisers	the dedicated RPV advisers as described in section 4.2.2.
RPV Team	the dedicated RPV Team as described in section 4.2.1.
Shortlisted Respondent	a Respondent that is invited by RPV, and approved by the Minister for Transport Infrastructure, to participate in the RFP Phase.
Signalling Equipment	has the meaning given in section 2.7.1.
Signalling Technology Supplier	has the meaning given in section 2.7.1.

<b>Term</b>	<b>Definition</b>
Social Procurement Framework	means Victoria's Social Procurement Framework published 26 April 2018 by the Victorian Government, as amended from time to time.
State	the State of Victoria.
State Adviser	includes: <ul style="list-style-type: none"> <li>• an RPV Adviser;</li> <li>• an adviser to a State Stakeholder;</li> <li>• an adviser to the State or its Associates in relation to the Project; or</li> <li>• an adviser to the State, its Associates, or any other State Government Agency in respect of a Related State Project.</li> </ul>
State Stakeholders	includes: <ul style="list-style-type: none"> <li>• any Government Agency; and</li> <li>• any person notified by the State to a Respondent to be a State Stakeholder,</li> </ul> and includes each of the following: <ul style="list-style-type: none"> <li>• Victorian Minister for Planning;</li> <li>• Victorian Department of Environment, Land, Water and Planning;</li> <li>• Victorian Department of Transport;</li> <li>• Commonwealth Department of Agriculture, Water and the Environment;</li> <li>• Environment Protection Authority (Victoria);</li> <li>• Aboriginal Victoria;</li> <li>• Heritage Victoria; and</li> <li>• ONRSR.</li> </ul>
Successful Proponent	the Shortlisted Respondent or Preferred Proponent selected to execute the PAA with RPV and V/Line (as the 'Successful Respondent' under the ADA).
Supplier Code of Conduct	the document titled 'Procurement - Supplier Code of Conduct' issued by the State (as amended from time to time) and available at <a href="http://www.procurement.vic.gov.au/Suppliers/Supplier-Code-of-Conduct">http://www.procurement.vic.gov.au/Suppliers/Supplier-Code-of-Conduct</a> .
Sustainability Policy	RPV's sustainability policy as described in the EDR.
Sustainability Vision	RPV's sustainability vision as described in section 2.14.1.
Target Outturn Cost or TOC	the estimate accepted by RPV as part of the relevant Proposal, of all Reimbursable Costs, Corporate Overhead and Profit and appropriate contingencies required to achieve MCOS Performance, perform and complete the Works in accordance with the PAA.
Team Member	an individual who is an employee, agent or adviser of a Member, who is directly involved in the Procurement Process for that Member.
Terms and Conditions	the terms and conditions set out in Appendix B to this Invitation for EOI.
Urban Design Framework or UDF	RPV's urban design framework as described in section 2.15.
Urban Design Principles	the urban design principles described in section 2.15.
Urban Design Strategy	the urban design strategy described in section 2.15.

Term	Definition
V/Line	V/Line Corporation (ABN 91 273 289 190), a statutory corporation established under the <i>Rail Corporations Act 2006 (Vic)</i> and continued under the <i>Transport Integration Act 2010 (Vic)</i> .
Value for Money or VFM Statement	RPV's value for money proposition for the Project, to be ultimately set out in the PAA.
Victorian Industry Participation Policy or VIPP	the Victorian Industry Participation Policy established under section 4 of the <i>Local Jobs First Act 2003 (Vic)</i> , as described in section 7.1.2.
VicTrack	Victorian Rail Track (ABN 55 047 316 805), a statutory corporation established under the <i>Rail Corporations Act 2006 (Vic)</i> and continued under the <i>Transport Integration Act 2010 (Vic)</i> .
WHS Accreditation Scheme	the scheme described in section 43 of the <i>ABCC Act</i> , as described in section 7.2.2.
Workplace Relations Management Plan or WRMP	the workplace relations management plan that must be developed by Shortlisted Respondents as described in section 7.2.1.
Works	the whole of the works and services to be performed by the Participants from time to time under the PAA.

## ACRONYMS

The definitions of acronyms used in this document are set out below.

Term	Definition
<b>ABCC</b>	Australian Building and Construction Commission
<b>AEDT</b>	Australian Eastern Daylight Time
<b>ADA</b>	Alliance Development Agreement
<b>ALT</b>	Alliance Leadership Team
<b>AMT</b>	Alliance Management Team
<b>APT</b>	Alliance Project Team
<b>ARO</b>	Accredited Rail Operator
<b>CEMP</b>	Construction Environmental Management Plan
<b>DoT</b>	Department of Transport
<b>EDR</b>	Electronic Data Room
<b>EES</b>	Environment Effects Statement
<b>EMF</b>	Environmental Management Framework
<b>EMR</b>	Environmental Management Requirement
<b>EMS</b>	Environmental Management System
<b>EOI</b>	Expression of Interest

<b>Term</b>	<b>Definition</b>
<b>EPBC</b>	Environment Protection and Biodiversity Conservation
<b>EPR</b>	Environmental Performance Requirement
<b>KPI</b>	Key Performance Indicator
<b>KRA</b>	Key Result Area
<b>LIDP</b>	Local Industry Development Plan
<b>LLEN</b>	Local Learning and Employment Networks
<b>MCOS</b>	Minimum Conditions of Satisfaction
<b>MPSG</b>	Major Projects Skills Guarantee
<b>MRPV</b>	Major Road Projects Victoria
<b>MTIA</b>	Major Transport Infrastructure Authority
<b>MTIB</b>	Major Transport Infrastructure Board
<b>NPA</b>	National Partnership Agreement on Land Transport Infrastructure Projects
<b>ONRSR</b>	Office of the National Rail Safety Regulator
<b>PS&amp;TR</b>	Project Scope and Technical Requirements
<b>PTV</b>	Public Transport Victoria
<b>RAMS</b>	Reliability, availability, maintainability and safety
<b>RAP</b>	Registered Aboriginal Party
<b>RCM</b>	Reimbursable Cost Multipliers
<b>RPV</b>	Rail Projects Victoria
<b>RRLTCS</b>	Regional Rail Link Train Control System
<b>RTO</b>	Rail Transport Operator
<b>SDD</b>	Sustainability in Design and Delivery
<b>SiD</b>	Safety in design
<b>TCS</b>	Train Control System
<b>TfV</b>	Head, Transport for Victoria
<b>TOC</b>	Target Outturn Cost
<b>UDF</b>	Urban Design Framework
<b>VIPP</b>	Victorian Industry Participation Policy

<b>Term</b>	<b>Definition</b>
<b>VFM</b>	Value for Money
<b>WHS</b>	Workplace Health and Safety
<b>WRMP</b>	Workplace Relations Management Plan

# APPENDIX B: TERMS AND CONDITIONS

## 1 Application of Terms and Conditions

The Terms and Conditions set out in this Appendix B apply on and from the date of this document.

## 2 General

### 2.1 Definitions

Unless the context otherwise requires, words and phrases used in the Terms and Conditions have the meaning ascribed to them in the Glossary.

### 2.2 Interpretation

- (a) Where the Respondent comprises more than one entity, the obligations and liabilities of the Respondent under the Terms and Conditions apply to the Respondent and each Member jointly and severally.
- (b) No rule of interpretation applies to the disadvantage of RPV on the basis that RPV put forward the Terms and Conditions.
- (c) Unless the context indicates a contrary intention, in the Terms and Conditions:
  - (i) 'includes' in any form is not a word of limitation; and
  - (ii) the meaning of 'or' will be that of the inclusive 'or', meaning one, some or all of a number of possibilities.
- (d) If any of the Terms and Conditions purport to exclude liability for a particular matter, such exclusion only operates to the extent permitted by Law.
- (e) Headings are for convenience only and do not affect interpretation.
- (f) The singular includes the plural and the plural includes the singular.
- (g) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (h) A reference to a person includes an individual, corporation, trust, partnership, unincorporated body or statutory body or other entity or any of them.
- (i) A reference to a time is to Australian Eastern Standard Time (AEST).
- (j) A reference to a party in the Terms and Conditions or another agreement or document includes that party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal or personal representatives).
- (k) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and all legislation, regulations or statutory instruments issued under it.
- (l) Unless expressly provided to the contrary in the Terms and Conditions, RPV may give, modify, withhold, withdraw, make or exercise any action, approval, consent, decision or discretion or other function under the Terms and Conditions at RPV's absolute discretion, whether subject to terms and at any time.

### 2.3 Ambiguity, discrepancy and inconsistency

In the event of any ambiguity, discrepancy or inconsistency between this Invitation for EOI and the Pre-qualification Document, the terms of this Invitation for EOI will take precedence.

## 3 Agreement to Comply with Terms and Conditions

- (a) Subject to clause 3(b), by taking receipt of the Invitation for EOI, the party receiving this Invitation for EOI, as a potential Respondent and each of its potential Members, agrees to comply with the Terms and Conditions as if it were a Respondent or Member (as relevant).
- (b) To the extent that a party referred to in clause 3(a) does not agree to comply with the Terms and Conditions, the potential Respondent must advise RPV in writing in accordance with clause 14 within 2 Business Days of receipt of the Invitation for EOI, and return the Invitation for EOI and any Disclosed Information to RPV.

- (c) Without limiting clause 6, in consideration of the potential Respondent and its potential Members agreeing to be bound by the Terms and Conditions, RPV will receive and consider the potential Respondent's EOI Response.
- (d) Nothing in the Terms and Conditions limits or otherwise derogates from any additional obligations on any potential or actual Respondent, Member or Associate under any deed or other arrangement with RPV relating to the management of conflicts, information barriers or confidentiality entered into prior to, on or after, the date of the Invitation for EOI.

## 4 Liability

- (a) Except as otherwise expressly provided in the Terms and Conditions, the Respondent and Members are not entitled to make any Claim against the Commonwealth, the State or RPV for any Liability incurred by them arising out of, or in connection with, the Terms and Conditions, the Procurement Process, the submission of an EOI Response, the Disclosed Information or any inspections of any site related to the Regional Rail Revival.
- (b) The Respondent and Members must indemnify, and must keep indemnified on demand, RPV and any of its Associates from and against any Claim or Liability suffered or incurred by RPV or any of its Associates arising out of, or in connection with:
  - (i) any breach by the Respondent or a Member of the Terms and Conditions;
  - (ii) any action or Claim brought by the Respondent, a Member or any of their respective Associates against RPV or any of its Associates with respect to any of the matters or events identified in clause 4(a);
  - (iii) any failure of an Associate to perform or otherwise comply with the **Associate Obligations** (as relevant); and
  - (iv) any site inspection to the extent caused by the act or omission, including any negligence of, the Respondent, a Member or any of their respective Associates.

## 5 Disclosed Information

### 5.1 Use and Disclosure

Subject to clauses 5.1(b), 5.2 and 5.3, the Respondent and each Member must:

- (a) not use the Disclosed Information for any purpose other than the Permitted Purpose; and
- (b) keep confidential and not copy or duplicate (or allow the copying or duplication of) any Disclosed Information.

The Respondent and Members may disclose the Disclosed Information to their respective Associates if the disclosure is required solely for the Permitted Purpose and is made in accordance with the Associate Obligations.

### 5.2 Approved Disclosure

The provisions of clauses 5.1(a) and 5.3 do not apply to:

- (a) the disclosure of Disclosed Information for which RPV has given its prior written consent;
- (b) Disclosed Information after (but only to the extent that) it becomes generally available to the public other than because of a breach of any provision of the Terms and Conditions; or
- (c) the disclosure of Disclosed Information to the extent necessary to comply with any applicable Law or legally binding order of any Government Agency.

### 5.3 Unauthorised Disclosure

The Respondent and each Member must:

- (a) notify RPV immediately if it becomes aware of any unauthorised disclosure, copying or use of Disclosed Information (suspected or actual);
- (b) immediately take all reasonable steps to prevent or stop any such suspected or actual unauthorised disclosure, copying or use of Disclosed Information (including complying with directions of RPV in this regard); and

- (c) take all reasonable steps to recover any Disclosed Information that has been disclosed, used or copied without RPV's consent under the Terms and Conditions.

## 5.4 No liability for Disclosed Information

The Respondent and each Member acknowledges and agrees that:

- (a) RPV and its Associates do not warrant, guarantee or make any representation (express or implied), or assume any duty of care, or accept any Liability, with respect to the completeness, accuracy, adequacy or correctness of Disclosed Information;
- (b) the Disclosed Information, and all Intellectual Property Rights in the Disclosed Information, will remain the property of RPV or any of its Associates (as the case may be);
- (c) the Respondent, Members and their respective Associates will not in any way rely upon:
  - (i) the Disclosed Information; or
  - (ii) a failure by RPV or any of its Associates to provide any information; and
- (d) the Respondent, Members and their respective Associates must each carry out all relevant investigations, make its own review and evaluation, and examine and acquaint itself in respect of:
  - (i) all aspects of the Project;
  - (ii) the contents, correctness, sufficiency and suitability of the Disclosed Information; and
  - (iii) all information which is relevant to the risks, contingencies and other circumstances related to the Project which could affect the decision to lodge an EOI Response,without reliance on RPV or any of its Associates.

## 5.5 Return of Disclosed Information

If RPV terminates the Procurement Process in respect of a Respondent (or the Procurement Process as a whole), the Respondent and Members must, at RPV's election, destroy or return to RPV all Disclosed Information other than Disclosed Information which:

- (a) is required to be retained in accordance with Law or a binding requirement of a recognised stock exchange;
- (b) forms part of the minutes of, or papers to, a board or investment committee of the Respondent or a Member;
- (c) is retained as part of automatic information technology archiving or back-up procedures; or
- (d) is required to be retained by an Associate of the Respondent or a Member in connection with its professional obligations, its insurance policies or for corporate governance purposes,

provided that, in each case, the Disclosed Information is kept confidential and otherwise in accordance with the Terms and Conditions.

## 5.6 Electronic Data Room

The Respondent and each Member acknowledges and agrees that:

- (a) any Electronic Data Room may (either wholly or in part) take the form of a web-based portal or other online facility for gaining access to information;
- (b) it is responsible for ensuring that it has all computer hardware and computer software required to gain access to any Electronic Data Room, and that such computer hardware and computer software must comply with any requirements notified by the State in writing from time to time;
- (c) it will comply with all directions issued by RPV in writing from time to time regarding access to or the use of any Electronic Data Room; and
- (d) RPV and its Associates do not warrant, guarantee or make any representation (express or implied), or assume any duty of care, or accept any Liability, with respect to the functionality, performance or availability of any Electronic Data Room, or whether any Electronic Data Room will be free of Disabling Code or will cause any Disabling Code to be introduced into any computer systems of the Respondent or a Member, and the

Respondent and Members are not entitled to make any Claim against RPV or its Associates for any Liability incurred by them arising out of or in connection with the use, functionality, performance or availability of any Electronic Data Room or the introduction of any Disabling Code into any computer systems of the Respondent or a Member.

## 5A Consistency with earlier undertaking

The Respondent must comply with and must not amend any undertaking given by that Respondent at any prior stage of the Pre-qualification Phase. For the avoidance of doubt, this includes the signed undertakings provided by the Respondent as part of its Pre-qualification Response and the EOI Response.

## 6 Discretion of RPV

- (a) The Respondent and each Member acknowledges and agrees to RPV's right, at RPV's absolute discretion, to:
- (i) reject or refuse to consider, or to accept any EOI Response that does not comply with the requirements of the Invitation for EOI, the RFP or the Terms and Conditions (as the case may be) or which is otherwise incomplete;
  - (ii) suspend or terminate the Procurement Process;
  - (iii) require the Respondent and each Member at any time (including as a condition precedent to being appointed a Preferred Proponent) to provide security for its involvement or continued involvement in the Procurement Process;
  - (iv) elect not to further evaluate any EOI Response that fails to satisfy the EOI Comparative Evaluation Criteria or other relevant evaluation criteria;
  - (v) accept or reject the whole or part of any EOI Response to the extent, in the case of part-acceptance, that part of the EOI Response is capable of such partial acceptance;
  - (vi) suspend or terminate the Respondent's participation in the Procurement Process if RPV forms the view that the Respondent, a Member or any of their respective Associates has:
    - (1) breached the Terms and Conditions; or
    - (2) failed to comply with RPV's instructions (if any) in response to a notice provided by the Respondent under clause 7.8(c);
  - (vii) require, request, receive or accept additional information, material, clarification or explanation from any Respondent or any Competing Respondent relating to an EOI Response at any time and RPV may, at its sole discretion, take such information, material, clarification or explanation into consideration in its evaluation of an EOI Response;
  - (viii) consider and accept an EOI Response regardless of whether:
    - (1) any Respondent, Member or any of their respective Associates has breached the Terms and Conditions; or
    - (2) any member of a Competing Respondent has breached the Terms and Conditions;
  - (ix) vary or supplement any of the Terms and Conditions or other aspects of the Invitation for EOI or the RFP;
  - (x) change the timing, order or application of any phase or process in the Procurement Process or supplement, remove, add to or vary any part of the Procurement Process;
  - (xi) accept or reject an EOI Response at any time after the closing time and date for the EOI Response, as set out in the Invitation for EOI or the RFP or which is lodged otherwise than in accordance with the Invitation for EOI or the RFP;
  - (xii) accept or reject any clarification question or request for a meeting which is lodged by a Respondent after the time and date specified, or otherwise in the manner specified, in the Invitation for EOI or the RFP as the closing time and date for such questions or requests;
  - (xiii) extend any time or date specified in the Invitation for EOI or the RFP;
  - (xiv) negotiate with any Respondent or Competing Respondent on any matter RPV may determine;
  - (xv) enter into an Alliance Development Agreement or Project Alliance Agreement with a Competing Respondent without prior notice to the Respondent;

- (xvi) allow any Respondent to clarify, alter, amend, add to or change its EOI Response, Members or Associates after the Closing Time and Date without notifying or offering the same opportunity to others;
  - (xvii) in evaluating any EOI Response, to have regard to:
    - (1) RPV's and its Associates' knowledge and previous experience and dealings with any Respondent, Member or any of their respective Associates; and
    - (2) information concerning a Respondent, Member or any of their respective Associates which is in the public domain or which is obtained by RPV or its Associates through its or their own investigations;
  - (xviii) select or decline to select any number of Shortlisted Respondents, or change the Shortlisted Respondent(s) or number of Shortlisted Respondents at any time;
  - (xix) select or decline to select any number of Preferred Proponents, or change the Preferred Proponent(s) or number of Preferred Proponents at any time;
  - (xx) require one or more of the Respondents and Competing Respondent to make a 'best and final offer';
  - (xxi) withdraw, cancel or modify (substantially or otherwise) the Project or the Procurement Process or any part of the Project or the Procurement Process;
  - (xxii) change the procurement method of the Project or the Procurement Process (including public sector delivery), or any part of the Project or the Procurement Process in any way it sees fit;
  - (xxiii) without limiting clause 6(a)(vi), select the highest ranked Respondent who does not have a Related Member ahead of a higher ranked Respondent that does have a Related Member;
  - (xxiv) not attribute any reasons for any actions or decisions taken, including in respect of the exercise of any or all of the abovementioned rights;
  - (xxv) otherwise take any such other action as it considers appropriate in relation to the Procurement Process;
  - (xxvi) without limiting clauses 6(a)(i) or 6(a)(iv), reject or refuse to consider, or to accept any EOI Response; and
  - (xxvii) require the Respondent or any Associate of a Respondent to enter into an additional probity and process deed with the State and /or the Commonwealth.
- (b) RPV is not obliged to disclose to any Respondent, Member or any of their respective Associates, any negotiations RPV has had with any Competing Respondent or any amendments, additions or other changes RPV has allowed a Competing Respondent to make to its EOI Response, and is not obliged to enter into similar negotiations with the Respondent or allow or require amendments, additions or changes to be made to its EOI Response.

## 7 Conflicts and Competing Respondents

### 7.1 Conflicts and Competing Respondents

Subject to clauses 7.7, 7.8 and 7.9, the Respondent and each Member:

- (a) acknowledges and agrees that except as consented to by RPV in writing (either conditionally or unconditionally, and at RPV's sole and absolute discretion), it is not and will not become:
  - (i) a member of, or otherwise be involved with a Competing Respondent in respect of the Procurement Process;
  - (ii) an Associate of RPV or involved with RPV or any of its Associates in respect of the Procurement Process; or
  - (iii) involved in the Regional Rail Revival or a Related State Project;
- (b) must immediately notify RPV of any involvement with;
  - (i) a State Stakeholder;
  - (ii) an Associate of RPV (or any of its Associates); or
  - (iii) a former State Adviser,
 in respect of the Procurement Process; and

- (c) warrants that no actual or perceived conflict of interest has arisen or is likely to arise in respect of the performance by a person within the Respondent or relevant Member or an Associate of a Respondent, in respect of the Procurement Process, and must immediately notify RPV should any such conflict arise;
- (d) must conduct themselves fairly and honestly;
- (e) must not engage in any practice that would defeat the purpose of a fair and transparent Procurement Process, including engaging in collusive tendering or any other anti-competitive practices such as:
  - (i) an agreement between the Respondents about who should be the Successful Proponent;
  - (ii) any meeting of Respondents to discuss their EOI Responses or Proposals if RPV is not present;
  - (iii) an exchange of information between Respondents about their EOI Responses or Proposals before awarding of the PAA;
  - (iv) an agreement or exchange of information between Respondents about the payment of money or securing of reward or benefit for unsuccessful respondents by the Successful Proponent;
  - (v) agreements between Respondents to fix the prices or conditions of a contract (this means any collaboration between Respondents of prices or conditions to be included in contracts without the consent of RPV);
  - (vi) a submission of a "cover tender" or to provide any assistance to any tender participant to submit a "cover tender" (that is, an EOI Response or Proposal submitted as genuine but which has been deliberately priced in order not to win);
  - (vii) any agreement between Respondents prior to submission of their EOI Responses or Proposals to fix the rate of payment of employer or industry association fees where the payment of such fees is conditional upon the Respondent being awarded the PAA; and
  - (viii) payment to any third party of money, fees, incentives or other concessions contingent on the success of the EOI Response or Proposal that do not relate to the provision of proper services relevant to the Procurement Process; and
- (f) must not:
  - (i) accept or provide any secret commissions;
  - (ii) enter into any improper commercial arrangements with other contractors, subcontractors, suppliers, agents or parties;
  - (iii) seek to influence contract decisions by improper means during the Procurement Process; or
  - (iv) accept incentives to provide contracts or services to other contractors, subcontractors or suppliers that financially disadvantage RPV.

## 7.2 Associates

The Respondent and each Member must ensure that each of their respective Associates complies with the requirements of clauses 4, 5, 7.1, 7.5, 7.6, 7.7, 7.8, 7.8A, 10, 11, 12, 13, 15 and 16 (as though it was a Member) (**Associate Obligations**).

## 7.3 Related Members

The Respondent acknowledges and agrees:

- (a) it must not have a Related Member as a Member except as consented to by RPV in writing (either conditionally or unconditionally, and at RPV's sole and absolute discretion);
- (b) that no confidential information about the Invitation for EOI or the RFP is to be disclosed to any person other than a Team Member, where RPV is satisfied such persons have complied with the Terms and Conditions;
- (c) to immediately notify RPV if it receives confidential information of a Competing Respondent, other than in accordance with the Terms and Conditions or as part of the proper process governing performance of a procurement process of another Work Package; and
- (d) that RPV has the right to exclude the Respondent from the Procurement Process for breach of this clause 7.3.

## 7.4 Team Members

- (a) No individual person can be a Team Member of more than one Respondent.
- (b) All Team Members, executive managers and board members of the Related Member:
  - (i) may be required to sign confidentiality and process agreements on terms satisfactory to RPV as a condition precedent to participating in the Procurement Process; and
  - (ii) as a condition precedent to contract execution, must sign statutory declarations confirming they have complied with their obligations under any confidentiality and process agreement signed as a condition precedent to participating in the Procurement Process.

## 7.5 Notification of grant and funding applications

The Respondent and each Member must ensure that the Respondent notifies RPV immediately if the Respondent or a Member intends to apply, or has applied, for a grant or funding assistance program administered by the Victorian or Commonwealth Governments. A notice under this clause must include, without limitation:

- (a) the name of the grant program;
- (b) who the grant program is administered by; and
- (c) the purpose for seeking the grant.

## 7.6 Competing Respondent conflicts

The Respondent and each Member must:

- (a) ensure that no Associate of a Respondent is an adviser to a Competing Respondent in relation to the Procurement Process;
- (b) immediately notify RPV of any Associate of a Respondent who is (or subsequently becomes) involved with, a Competing Respondent in relation to the Procurement Process; and
- (c) unless otherwise agreed to by RPV:
  - (i) ensure that any Associate of a Respondent the subject of clause 7.6(a) or a notification under clause 7.6(b), immediately ceases its involvement with the Competing Respondent; or
  - (ii) otherwise take such action as is necessary to ensure that any Associate of a Respondent the subject of clause 7.6(a) or a notification under clause 7.6(b) is no longer an Associate of more than one Respondent or relevant Member.

## 7.7 State Adviser Conflicts

- (a) The Respondent and each Member must:
  - (i) ensure that no Associate of a Respondent is a State Adviser, except as consented to by RPV in writing (either conditionally or unconditionally, and at RPV's sole and absolute discretion);
  - (ii) provide details in its EOI Response and each Proposal (as required) of any Member or Associate that has an existing relationship with a State Adviser;
  - (iii) immediately notify RPV of any Member or Associate of a Respondent who subsequently becomes involved with RPV in respect of the Procurement Process or a Related State Project; and
  - (iv) where a Respondent identifies an existing relationship with a State Adviser, comply with such probity arrangements as directed by the State and to the satisfaction of the RPV Probity Adviser.
- (b) Without limiting clause 6, the State may terminate a Respondent from the Procurement Process if satisfactory probity arrangements cannot be agreed with the RPV Probity Adviser or maintained by the Respondent.

## 7.8 Regional Rail Revival Conflicts

Subject to clauses 7.6 and 7.7, RPV acknowledges that the Respondent or a Member may have participated, may currently be participating, or may propose to participate in future, in tender processes as part of or related to the Regional Rail Revival program (**Other Participation**), including in respect of:

- (a) the Ararat Stabling Project;
- (b) the Avon River Bridge Upgrade;
- (c) the Ballarat Line Upgrade;
- (d) the Bendigo and Echuca Line Upgrade;
- (e) the Bendigo Metro Stage 3 Project;
- (f) the Geelong Line Upgrade;
- (g) the Gippsland Line Upgrade;
- (h) the North East Line Upgrade (Donnybrook and Wallan stations);
- (i) the North East Line Upgrade (Track Improvements);
- (j) the North East Line Upgrade (VLocity Enabling Infrastructure);
- (k) the Shepparton Corridor Upgrade;
- (l) the Warrnambool Line Upgrade Stage 1 and 2; or
- (m) other current and future packages delivered as part of the Regional Rail Revival program,

(the **Other RRR Projects**) however, if the Respondent or Member (as relevant) has done so, is currently doing so, or proposes to do so in future, it must:

- (n) ensure that it provides written notice of that Other Participation to RPV as soon as practicable (and in any case, prior to submitting an EOI Response) or if the Other Participation has not yet commenced, prior to that participation commencing (including by the Respondent or Member, or any of its Associates, directors, agents, officers, employees or contractors), detailing:
  - (i) the nature and extent of that Other Participation; and
  - (ii) compliance with all relevant probity arrangements, including any arrangements necessary to mitigate the potential for any actual or perceived unfair advantage to be obtained by:
    - (1) the Respondent; or
    - (2) a participant,in relation to the relevant Other RRR Project;
- (o) establish internal systems and processes to ensure that information obtained during the Procurement Process is not shared beyond, and confidentiality is preserved between, those directors, agents, officers, employees and contractors which are participating in the Procurement Process; and
- (p) notify RPV immediately in writing if it becomes aware of any non-compliance with this clause 7.8.

## 7.8A. Related State Project Conflicts

Subject to clauses 7.6 and 7.7, RPV acknowledges that the Respondent or a Member may participate in the tender process in respect of a Related State Project.

However, if the Respondent or Member (as relevant) proposed to do so it must:

- (a) ensure that its, and its Associates', directors, agents, officers, employees and contractors which are participating in the Procurement Process are not participating in the tender process for a Related State Project unless the prior consent of RPV (either conditional or unconditional, and at RPV's sole and absolute discretion) has been obtained in relation to any such involvement and probity arrangements as directed by RPV are complied with, including those RPV considered necessary to mitigate the potential for any actual or perceived unfair advantage to be obtained by:
  - (i) the Respondent; or
  - (ii) a participant in the tender process for the Related State Project;
- (b) establish internal systems and processes to ensure that information obtained during the Procurement Process is not shared beyond, and confidentiality is preserved between, those directors, agents, officers, employees and contractors which are participating in the Procurement Process; and

- (c) notify RPV immediately in writing if it becomes aware of any non-compliance with this clause 7.8A.

## 7.9 Release of advisers

- (a) If RPV has:
  - (i) selected a Competing Respondent as the Preferred Proponent;
  - (ii) has terminated or suspended the participation of the Respondent in the Procurement Process; or
  - (iii) the Respondent has otherwise withdrawn from the Procurement Process,

the Respondent and each Member agrees, if requested in writing by RPV, to release any of its adviser to permit them, subject to the written approval of RPV, to be involved in the Project with a Competing Respondent, RPV or any of its Associates.

- (b) The release of an adviser under clause 7.9(a) may be subject to the maintenance of confidentiality of information relating to the Respondent and Members by the relevant adviser, on terms agreed with RPV, which agreement will not be unreasonably withheld.

## 7.10 Right to impose additional requirements

- (a) Without limiting clause 6, the Respondent and each Member acknowledges and agrees that RPV may impose additional obligations, including by issuing addenda to these Terms and Conditions or requiring the execution of confidentiality and process agreements:
  - (i) on the Respondent and Member if:
    - (1) they identify an existing relationship with RPV or a State Adviser in accordance with clause 7.7;
    - (2) they participate in a tender process described in clause 7.8; or
    - (3) RPV reasonably determines that:
      - A. the relationship of the Respondent or a Member to any person involved in a Competing Respondent;
      - B. the relationship of the Respondent or a Member to an Associate of RPV, or their involvement with RPV or any of its Associates in relation to the Project; or
      - C. the participation of a Respondent or a Member in the Regional Rail Revival program or Related State Project,renders such additional obligations necessary or desirable to ensure confidentiality, competitiveness or probity with respect to the Procurement Process;
  - (ii) on any Related Member to implement arrangements and enter into agreements with RPV as a condition to the Respondent and relevant Members continuing in the Procurement Process;
  - (iii) on the Respondent or any Related Member in order to facilitate interactions between Respondents and other government agencies or relevant entities for purposes of the Regional Rail Revival program; or
  - (iv) on any of the Respondent, a Member or a Related Member if RPV reasonably considers that a conflict of interest or a probity concern has arisen or is likely to arise in relation to a Respondent or Member.
- (b) Upon receipt of any additional obligations or arrangements under clause 7.10(a), the Respondent, each Member and any Related Member (as the case may be) must promptly comply with the additional obligations or implement arrangements to the satisfaction of RPV.
- (c) Without limiting clause 6, RPV may terminate or suspend the participation of a Respondent or any Member from the Procurement Process if the Respondent or any Member fails to comply with the additional obligations or arrangements proposed under clause 7.10(a).

## 7.11 Members and Associates

The Respondent warrants that its EOI Response accurately identifies the Respondent and all Related Members, Members, Team Members and applicable Associates.

## 8 Process Matters

### 8.1 Structure and submission

The Respondent must prepare and submit its EOI Response in accordance with the requirements outlined in this Invitation for EOI.

### 8.2 Timing

- (a) EOI Responses must be submitted by the EOI Closing Time and Date. RPV may, by written notice, extend the EOI Closing Time and Date.
- (b) A late EOI Response will not be considered by RPV unless:
  - (i) extenuating circumstances exist and are made known to RPV, preferably before the EOI Closing Time and Date but otherwise at the time the EOI Response is lodged; and
  - (ii) those circumstances are acceptable to RPV, in RPV's sole discretion.

### 8.3 Contact

- (a) The Respondent and each Member acknowledges and agrees that it will not, and it will ensure that its respective Associates do not, make contact with:
  - (i) any Government Agency or officer;
  - (ii) RPV or any of its Associates;
  - (iii) members of Parliament or their staff; or
  - (iv) any State Stakeholders,to discuss any aspect of the Project, the Procurement Process, the Invitation for EOI, the RFP or any EOI Response or Proposal except as provided for in the Terms and Conditions.
- (b) The Respondent and each Member acknowledges and agrees that it will not offer any inducement, fee or reward to RPV or any of its Associates.
- (c) Any notification to be provided by RPV under the Terms and Conditions will not have been given or deemed to have been given unless such notice has been given by RPV in writing.
- (d) The RPV Probity Adviser has been appointed by RPV to advise on and monitor the procedural integrity of the Procurement Process. The Respondent and each Member must immediately advise the RPV Probity Adviser of any issues or concerns it has with the probity or integrity of the Procurement Process, including the EOI Phase and the RFP Phase, so that the matter may be considered and remedied where appropriate. When raising an issue or concern, the Respondent or relevant Member must provide any such information required by the RPV Probity Adviser so that the RPV Probity Adviser can appropriately address the issue or concern raised. Any contact or communication with the RPV Probity Adviser must be disclosed to RPV.
- (e) The Respondent and each Member acknowledges and agrees that it will notify RPV immediately if:
  - (i) it becomes aware of any non-compliance with this clause 8.3; or
  - (ii) it has any contact with:
    - (1) any Government Agency or officer;
    - (2) RPV or any of its Associates;
    - (3) members of Parliament or their staff; or
    - (4) any State Stakeholders,outside of the formal Procurement Process in relation to any aspect of the Project, the Procurement Process, the Invitation for EOI, the RFP, or any EOI Response or Proposal.

### 8.4 Material changes

- (a) The Respondent must notify RPV promptly in writing of any:
  - (i) material change to any:
    - (1) information contained in its EOI Response;
    - (2) additional information submitted to RPV pursuant to the EOI or RFP; or

- (3) information submitted to RPV in any interview, meeting or workshop conducted pursuant to the EOI or RFP;
  - (ii) event which may affect or have an impact on the financial position or capacity of the Respondent or any Member or ability of the Respondent or Member to continue to participate in the Procurement Process or comply with the Terms and Conditions; or
  - (iii) circumstances which may affect the truth, completeness or accuracy of any of the information provided in, or in connection with, the EOI Response.
- (b) Upon receipt of any written notification pursuant to clause 8.4(a), RPV reserves the right to:
- (i) assess the change and terminate the Respondent's or any Member's further participation in the Procurement Process; or
  - (ii) invite the Respondent to amend its EOI Response accordingly.

## 8.5 Changes to Members

- (a) If, after lodgement of its EOI Response:
- (i) there is a change in the structure of a Member or there is otherwise a change in control (as that term is defined in section 9 of the *Corporations Act 2001* (Cth)) of a Member; or
  - (ii) the Respondent replaces, adds or removes a Member, from those entities identified as Members in the Respondent's EOI Response,

the Respondent must:

- (i) promptly notify RPV;
  - (ii) provide RPV with sufficient details of the change; and
  - (iii) provide evidence to RPV that the new Member has agreed to be bound by the Terms and Conditions.
- (b) Upon receipt of a notification under clause 8.3(a) and without limiting clause 7.10, RPV will assess any change and reserves the right to accept the change or terminate the Respondent's further participation in the Procurement Process.

## 8.6 Addenda

The Respondent and each Member agrees that:

- (a) at any time during the Procurement Process RPV may, for any reason (but without being obliged to do so), amend the Invitation for EOI (including the Terms and Conditions) or the RFP, by issuing an addendum;
- (b) none of RPV or any of its Associates will have any Liability to the Respondent or any Member as a consequence of any such addenda; and
- (c) the Respondent must prepare its EOI Response and each Proposal to take into account and reflect the content of any such addenda.

## 8.7 Site inspections

- (a) RPV may grant the Respondent or any Member permission to undertake inspections of any site related to the Project.
- (b) The Respondent and each Member must comply with any protocols, procedures or requirements notified by RPV prior to any such inspection referred to in clause 8.7(a).

## 8.8 Interactive Tender Workshops and Meetings

The Respondent and each Member:

- (a) acknowledges that RPV:
  - (i) intends to hold a series of interactive tender workshops during the Procurement Process; and
  - (ii) may hold other meetings,

- with the Respondent, Members, Competing Respondent and their respective Associates during the Procurement Process; and
- (b) agrees to participate in any interactive tender workshops and attend any meeting held during the Procurement Process advised by RPV on the basis of any protocols specified by RPV in respect of that process.

## 8.9 No Amendment

The Respondent may not amend its EOI Response or any Proposal (unless invited or requested to do so by RPV or as otherwise required by the Terms and Conditions) after it has been submitted.

## 8.10 No requirement to return

The Respondent agrees that RPV will not be required to return the EOI Response or any Proposal or any documents, materials, articles and information lodged by the Respondent as part of, or in support of, its EOI Response or Proposal.

## 8.11 State approval

To the extent that RPV may provide any approval or direction in accordance with the Terms and Conditions, the Respondent must, and must ensure that each Member and their respective Associates, comply with the terms of such approval or direction and any such conditions attaching to that approval or direction.

# 9 Disclosure by RPV

## 9.1 Disclosure by RPV

The Respondent and each Member acknowledges and agrees that RPV or any of its Associates may publish or disclose (on the internet or otherwise), and consents to such publication or disclosure, details of:

- (a) the Respondent(s) (including Members and any of their Associates);
- (b) the identity of the Preferred Proponent(s) (including Members and any of their Associates);
- (c) the status of the Procurement Process at any time; and
- (d) the EOI Response or any Proposal, including communication and promotional information submitted by the Preferred Proponent with its EOI Response or Proposal.

## 9.2 Public disclosure and Freedom of Information

- (a) The Respondent and each Member acknowledges and agrees that disclosure by either of RPV or any of its Associates of any information provided by the Respondent, a Member or any of their respective Associates may be required and consents to such disclosure:
  - (i) under any current legislation including;
    - (1) the *Freedom of Information Act 1982* (Vic);
    - (2) the *Ombudsman Act 1973* (Vic); and
    - (3) the *Audit Act 1994* (Vic);
  - (ii) under any future legislation;
  - (iii) in the course of the official duties of a relevant Minister or Department or RPV;
  - (iv) to satisfy requirements of parliamentary accountability;
  - (v) in annual reports of RPV;
  - (vi) pursuant to policies of the Victorian government; or
  - (vii) to satisfy any other recognised public requirement,

(each a **Public Disclosure Obligation**).
- (b) The Respondent and each Member must use all reasonable endeavours to assist RPV and its Associates in meeting their Public Disclosure Obligations.

## 9.3 Intellectual property

- (a) The Respondent and each Member warrants that between them they have the authority to grant the rights granted to RPV under clause 9.3(c) and that exercise of those rights by RPV or any person authorised by RPV in accordance with, or as contemplated by, the Terms and Conditions will not infringe the Intellectual Property Rights or other rights of any person.
- (b) The Respondent and each Member must indemnify RPV against any Liability or Claim arising from any breach of the warranties set out in clause 9.3(a).
- (c) Subject to the terms of the Invitation for EOI (including this clause 9.3 and clause 1) and the RFP and ADA, the Respondent and each Member grants (and will procure that each of its respective Associates with a relevant interest grants) to RPV and its Associates an irrevocable, perpetual, non-exclusive, transferable, free of charge licence in respect of its interests in the whole or any part of any EOI Response or Proposal to use, reproduce, develop, communicate or modify or sub-licence that material for the purposes of the Procurement Process provided that, subject to the Terms and Conditions and RPV project documents, RPV may not (other than pursuant to clause 9.2(a)) provide the whole or any part of any EOI Response or Proposal to a Competing Respondent without the prior written consent of the Respondent.
- (d) Without limiting the application of clause 9.3(c), if the Respondent has been nominated as the Preferred Proponent, the Respondent and each Member also licenses RPV and its Associates to make publicly available:
  - (i) the broad concept plan, design documents and any other sketches or drawings of any element of the Project;
  - (ii) the key functional and operational characteristics;
  - (iii) the aggregate capital and/or operating cost;
  - (iv) the proposed risk allocation; and
  - (v) other high level commercial or technical information, in relation to the Respondent's Proposal.

## 10 No legal relationship in respect of delivery of the Project

The Respondent and each Member acknowledges and agrees that:

- (a) the Invitation for EOI and the RFP do not constitute an offer to enter into the Project Alliance Agreement;
- (b) other than the process contract that is formed between RPV and the Respondent by the operation of clause 3:
  - (i) no contract exists or will arise between RPV, the Respondent and the Members in respect of the Project unless and until the Project Alliance Agreement is executed; and
  - (ii) none of RPV, the Respondent or the Members intends to create a legal relationship; and
- (c) these Terms and Conditions set out the entire agreement between RPV, the Respondent and the Members in respect of the Procurement Process.

## 11 Publicity

Except to the extent it is not possible to comply with this clause 11 while complying with the Law or the binding requirement of a recognised stock exchange, the Respondent and each Member must not make, and must procure that none of its respective Associates make, a media release or other public announcement or statement in relation to the Project or the Procurement Process without the prior written consent of RPV.

## 12 Notices

Subject to clauses 8.3(e) and 13, all communications (including notices, demands, consents, approvals or requests) under or in connection with the Terms and Conditions (**Notice**):

- (a) must be, if in writing, signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, and on behalf of, that party; and
- (b) must be:
  - (i) delivered or posted by prepaid post to the address, or sent by fax to the number, of the addressee, specified in the Invitation for EOI or the RFP (in the case of RPV), and the EOI Response or Proposal (in the case of the Respondent); or
  - (ii) sent by email to the email address specified in the Invitation for EOI or the RFP (in the case of RPV), and the EOI Response or Project Proposal (in the case of the Respondent); or
  - (iii) to the address, fax number or email address (as the case may be) last notified by the intended recipient to the sender.

## 13 Time of receipt

- (a) A Notice given to a person in accordance with clause 12 is treated as having been given and received by the addressee:
- (b) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia;
- (c) in the case of fax, at the local time (in the place of receipt of that fax) which then equates to the time that fax is sent as shown on the transmission report produced by the machine from which that fax is sent confirming transmission of that fax in its entirety, unless that local time is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
- (d) in the case of delivery by hand, on delivery at the address of the addressee as provided in the Invitation for EOI or the RFP (in the case of RPV), and the EOI Response or Proposal (in the case of the Respondent), or to such other address last notified by the intended recipient to the sender, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day; and
- (e) in the case of delivery by email, the first to occur of:
  - (i) receipt by the sender of any email acknowledgement from the intended recipient's information system showing that the Notice has been delivered to the email address of that recipient;
  - (ii) the time that the Notice enters an information system which is under the control of the intended recipient; and
  - (iii) the time that the Notice is first opened or read by an employee or officer of the intended recipient,
 but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day or after Business Hours, the Notice will be taken to have been duly given or made at the start of business on the next Business Day.

## 14 Survival of obligations

The Respondent's and each Member's obligations pursuant to the Terms and Conditions shall exist prior to, and shall survive the termination or completion of, the Project.

## 15 General Terms and Conditions

### 15.1 Requirements of fairness

The Respondent and each Member acknowledges and agrees that:

- (a) it must not attempt to obtain any advantage for itself by seeking information other than through the means set out in the Invitation for EOI or the RFP or by attempting to influence RPV or any of its Associates in relation to the Procurement Process through any means apart from communications and the presentation of information in accordance with the Terms and Conditions or the Invitation for EOI or the RFP; and

- (b) it will not, and will procure that its respective Associates do not, engage in collusive tendering, anti-competitive conduct or any similar conduct with a Competing Respondent or any other person in relation to the Procurement Process.

## 15.2 Waiver

- (a) Subject to the express provisions of the Terms and Conditions, if RPV or any of its Associates fails or delays in exercising or enforcing any right or remedy under the Terms and Conditions, the Invitation for EOI or the RFP, it will not preclude or amount to a waiver of any further exercise or enforcement of that right or remedy or of any other right or remedy under the Terms and Conditions or provided by Law.
- (b) If RPV or any of its Associates fails or delays in exercising or enforcing any right or remedy under a similar deed to the Terms and Conditions, the Invitation for EOI or the RFP against any Competing Respondent, none of the Respondent, Members or of their respective Associates will have or make any Claim against RPV or RPV in respect of such failure or delay.

## 15.3 No merger

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by the Terms and Conditions. They will survive the end of the EOI Phase and the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

## 15.4 Entire agreement and inconsistency

- (a) The terms and conditions for the Procurement Process are contained entirely in the Invitation for EOI and the RFP. There are no undertakings, agreements, warranties or representations (express or implied), with respect to the matters contemplated by the terms and conditions except for those referred to in them.
- (b) The Respondent must notify RPV in writing if the Respondent or a Member is of the opinion that there is any error or discrepancy in the Invitation for EOI or the RFP, as soon as reasonably practicable after discovering it.
- (c) Following receipt of a written notice pursuant to clause 15.4(b), or if RPV otherwise discovers an ambiguity, discrepancy or inconsistency, RPV in its sole and absolute discretion, will direct the Respondent in writing as to how to resolve the ambiguity, discrepancy or inconsistency.

## 15.5 Probity checks

- (a) RPV may conduct checks in relation to the Respondent, each Member and any of their respective Associates during the Procurement Process in relation to probity matters (**Probity Checks**).
- (b) The Respondent and each Member consents to such Probity Checks, agrees to procure the consents of its directors and to procure the consents of such employees respective Associates as are requested by RPV, and as are required by Law to be obtained in connection with such Probity Checks.
- (c) The Respondent and each Member acknowledges and agrees that RPV:
  - (i) is not under any obligation to provide to the Respondent or any Member the results of any Probity Checks;
  - (ii) may take into account any matters revealed by any Probity Checks in evaluating any EOI Response or Proposal; and
  - (iii) may reject any EOI Response or Proposal, suspend or terminate the Respondent's or a Member's participation in the Procurement Process or take such other action as it considers appropriate, in its absolute discretion, in light of matters revealed by any Probity Checks.

## 15.6 RPV entitlement to adopt a proposed or draft document

If RPV has exercised its right to terminate the Procurement Process with respect to the Respondent and all Competing Respondents without selecting a Successful Proponent, then the Respondent and each Member acknowledges that RPV is at liberty to negotiate with any party to a proposed or draft document submitted as part of an EOI Response or Proposal, with a view to entering into a contract with that party on substantially the same terms as the proposed or draft document.

## 15.7 Severability of provisions

If any provision of the Terms and Conditions is held to be invalid, unenforceable or illegal for any reason, the Terms and Conditions shall remain otherwise in full force and effect apart from such provision which shall be deemed deleted.

## 15.8 Indemnity, rights held on trust and no fettering

The Respondent and each Member declares and acknowledges that:

- (a) each indemnity and right referred to in the Terms and Conditions in favour of any of RPV's Associates is held on trust by RPV for the benefit of any of its Associates from the date of receipt of the Invitation for EOI;
- (b) the consent of the Associates of RPV will not be required for any amendment to, or waiver of rights under, the Terms and Conditions by RPV; and
- (c) nothing contained or implied in the Terms and Conditions will be construed or interpreted as unlawfully restricting or otherwise unlawfully affecting the unfettered discretion of RPV to exercise any of its executive or statutory powers or functions under any Law.

## 15.9 Governing law and jurisdiction

The Terms and Conditions are governed by, and are to be construed in accordance with, the Laws applicable in Victoria. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

## 15.10 Process agents

Each Member that does not have its registered office in Australia irrevocably:

- (a) nominates the Respondent as its agent to receive service of process or other documents in any action in connection with the Procurement Process; and
- (b) agrees that service on that agent will be sufficient service on it.

## 15.11 Additional obligations unaffected

The obligations set out in the Terms and Conditions are in addition (and without prejudice) to any other obligations of confidence or with respect to probity which the Respondent or Members may have, whether at Law, in equity, by statute or otherwise.

## 15.12 Privacy

The Respondent warrants that it has obtained consent from all relevant individuals for Sensitive Information (as that term is defined in the *Privacy Act 1988* (Cth)) provided in the EOI Response and has otherwise complied with the *Privacy Act 1988* (Cth).

## 15.13 Costs borne by Respondent

- (a) The Respondent bears entirely and exclusively all costs and expenses incurred in any way associated with developing, preparing and submitting its EOI Response, including attending meetings, site visits, interviews, workshops and providing any additional

information required by RPV, irrespective of whether or not the Project or Procurement Process proceeds, the Respondent's EOI Response is accepted by RPV, or the Respondent is selected as a Shortlisted Respondent.

- (b) The Respondent acknowledges and agrees that under no circumstances will RPV or RPV's Associates reimburse any charges, costs, expenses or fees that may be incurred by an Interested Party, the Respondent, a Member of the Respondent, or any party expressing any interest in submitting an EOI Response.

## 16 Complaints or challenges

### 16.1 Application of this clause

This clause 16 applies only:

- (a) if this Invitation for EOI is a covered procurement; and
- (b) to suppliers (as defined in sub-clause 16.2 below) with their principal place of business in relevant jurisdictions.

### 16.2 Definitions

For the purpose of this clause 16:

- (a) "covered procurement" means a procurement to which the requirements of international agreements apply, as set out in:
  - (i) the *Instructions for Public Construction Procurement in Victoria*, published by the Department of Treasury and Finance; and
  - (ii) the *Government procurement under International Agreements – procurement guide*, published by the Victorian Government Purchasing Board and which is published at <https://www.buyingfor.vic.gov.au/government-procurement-under-international-agreements-goods-and-services-procurement-guide>;
- (b) "measures" means the Victorian Government's measures to implement the procurement requirements of international agreements, a list of which is published at <https://www.buyingfor.vic.gov.au/measures-implementing-procurement-requirements-international-agreements>;
- (c) "public interest certificate" means a certificate issued on behalf of RPV stating that it is not in the public interest for the Procurement Process to be suspended while a complaint by a supplier is being managed in accordance with this clause 16;
- (d) "relevant jurisdictions" means those jurisdictions to which the measures apply, a list of which is published at <https://www.buyingfor.vic.gov.au/relevant-jurisdictions-domestic-dispute-resolution-international-agreements>; and
- (e) 'supplier' means a person or group of persons that provides or could provide goods or services.

### 16.3 Resolution procedure

Any complaint or challenge by a supplier with respect to the Procurement Process that there has been a failure of the procuring entity to comply with one or more measures (**Complaint**) shall be resolved in accordance with this clause 16.

### 16.4 Notice of complaint

A supplier who has a Complaint:

- (a) may deliver to RPV a notice of Complaint which must include:
  - (i) a demand that the Complaint be reviewed and resolved in accordance with this clause 16; and
  - (ii) a description of the nature and circumstances of the Complaint and a statement of the relief sought and, if compensation is claimed, the amount claimed from RPV,

**(Notice of Complaint)**; and

- (b) must deliver any Notice of Complaint within 21 days of the date on which the basis for the Complaint became known or reasonably should have become known for the supplier.

## 16.5 Negotiation

A representative of each of the supplier and RPV, each having authority to resolve the Complaint, must, within 21 days of delivery of the Notice of Complaint, meet and negotiate in good faith to resolve the Complaint.

## 16.6 Mediation

- (a) If the Complaint is not resolved within 21 days of delivery of the Complaint, either the supplier or RPV may by written notice to the other party refer the Complaint for mediation under the Australian Centre for International Commercial Arbitration (ACICA) Mediation Rules (**Mediation Notice**).
- (b) The mediation will take place in Melbourne, Australia.
- (c) The mediator will be selected from the list of mediators established by the Victorian Government for the purposes of this clause 16 and published on <https://www.buyingfor.vic.gov.au/arbitrators-available-dispute-resolution-under-international-agreements> (if such list is established) and otherwise in accordance with the ACICA Mediation Rules.

## 16.7 Arbitration

- (a) If the Complaint is not finally resolved by mediation in accordance with clause 16.6 within 28 days of delivery of the Mediation Notice, the Complaint shall be resolved by arbitration in accordance with the ACICA Arbitration Rules in force at the time subject to the provisions of this clause 16, the remainder of this Appendix B, and the RFP and the ADA on the terms set out in those documents (as applicable).
- (b) The tribunal shall comprise one arbitrator.
- (c) The arbitrator must be selected from the list of arbitrators established by the Victorian Government to determine complaints under this clause 16 and published at <https://www.buyingfor.vic.gov.au/arbitrators-available-dispute-resolution-under-international-agreements> (if such panel is established) and otherwise in accordance with the ACICA Arbitration Rules.
- (d) The language of the arbitration shall be English.
- (e) The place of arbitration shall be Melbourne, Australia.
- (f) In making procedural orders, the tribunal must:
  - (i) order the delivery by RPV to the tribunal of a written response to the Complaint;
  - (ii) order the disclosure to the tribunal of all relevant documents;
  - (iii) convene a hearing at which all participants shall have the right to be heard and the right to be represented;
  - (iv) if requested by a participant, order that any hearing take place in public; and
  - (v) if requested by a participant, order that witnesses may be presented at any hearing.
- (g) The tribunal must deliver its award in a timely fashion, in writing and setting out an explanation of the basis for each decision or recommendation contained in the award.
- (h) The powers of the tribunal constituted in accordance with this clause 16 include the power:
  - (i) to make orders for the rapid interim measures to preserve the supplier's opportunity to participate in the procurement;
  - (ii) to take into account, when making orders or the interim measures, any overriding adverse consequences for the interests concerned, including the public interest;
  - (iii) where the tribunal determines that there has been a failure of the procuring entity to comply with one or more measures, to award compensation or corrective action, however any compensation awarded to the supplier must not exceed the

costs reasonably incurred by the supplier in the preparation of the tender giving rise to the complaint.

- (i) If:
  - (i) a public interest certificate has been issued in respect of this Procurement Process; and
  - (ii) the Procurement Process has not reached the stage where a contract has been entered into with a supplier,then:
  - (iii) the tribunal must consider whether the award of corrective action would result in significant delay to the Procurement Process, and if so, whether awarding compensation would be a more appropriate remedy than an award of corrective action; and
  - (iv) if the tribunal is satisfied that an award of corrective action would result in a significant delay to the Procurement Process and that awarding compensation is a more appropriate remedy, then the tribunal may refuse to award corrective action.
- (j) Any award rendered in arbitration proceedings conducted in accordance with this clause 16 may, no earlier than 90 days after the date of the award, be provided by RPV to a supplier (other than the supplier to whom the award relates) in a sanitised form if requested in writing by the supplier.
- (k) RPV is not obliged to disclose the award if the award is subject to judicial challenge or otherwise the subject of court proceedings.
- (l) Where an arbitration conducted pursuant to this clause 16 is subject to the *Commercial Arbitration Act 2011* (Vic), the parties agree that an appeal may be made under section 34A of that Act.

## **APPENDIX C: TENDER SUBMISSION REQUIREMENTS**

EOI Responses will be submitted electronically. Further information on the submission process will be released via the EDR at a later stage.

## APPENDIX D: RPV CONTRACTORS AND CONSULTANTS

In addition to those advisers in section 4.2.2, the following lists RPV's contractors and consultants (and their subcontractors / sub-consultants), who are, subject to section 4.2.2, deemed exclusive to the State:

Consultant name	Services
AECOM Australia Pty Ltd	Technical services
Agonis Group Pty Ltd	Management, Business Professionals and Administrative Services
Aquenta Consulting Pty Ltd	Civil engineering, construction work
Arnold Bloch Leibler	Management, Business Professionals and Administrative Services
Arnold Dix Consultant	Management, Business Professionals and Administrative Services
Artisan Recruitment Pty Ltd	Editorial, Design, Graphic and Fine Art Services
Arup Australia Pty Ltd	Management, Business Professionals and Administrative Services
Aurecon Australasia Pty Ltd	Education Services - Other
Bamser Holdings Pty Ltd	Management, Business Professionals and Administrative Services
BECA Pty Ltd	Management, Business Professionals and Administrative Services
Clayton Utz	Legal Services
ConnellGriffin Pty Limited	Management, Business Professionals and Administrative Services
Darzin Software	Data Processing Services
Data Agility	Engineering and Research and Technology Based Services
Digital Image Communications	Editorial, Design, Graphic and Fine Art Services
Downer EDI Works	Civil engineering, construction work
Esri Australia Pty Ltd	Information Technology, Broadcasting and Telecommunications
Flagstaff Consulting Group Pty Ltd	Management, Business Professionals and Administrative Services
Herbert Smith Freehills	Legal Services
HKA Global Pty Ltd	Management, Business Professionals and Administrative Services
Indec Pty Ltd	Management, Business Professionals and Administrative Services
Ineight Pty Ltd	Management, Business Professionals and Administrative Services

<b>Consultant name</b>	<b>Services</b>
Infrastructure Advisory Group Pty Ltd	Management, Business Professionals and Administrative Services
Ipsos Public Affairs Pty Ltd	Management, Business Professionals and Administrative Services
Kellogg Brown & Root Pty Ltd	Installation work
Konica Minolta Business Solutions Australia Pty Ltd	Data Processing Services
Lovell Christopher John	Management, Business Professionals and Administrative Services
Mace Australia Proprietary Limited	Management, Business Professionals and Administrative Services
MBB Consulting Pty Ltd	Management, Business Professionals and Administrative Services
MBMPL Pty Ltd	Management, Business Professionals and Administrative Services
Mediacom Australia Pty Limited	Management, Business Professionals and Administrative Services and Editorial, Design, Graphic and Fine Art Services
Middleton Group Engineering Pty Ltd	Management, Business Professionals and Administrative Services
Minter Ellison Lawyers	Legal Services
Palazzi Rail Pty Ltd	Management, Business Professionals and Administrative Services
PricewaterhouseCoopers	Legal Services
RPS Manidis Roberts Pty Ltd	Building, Construction and Maintenance Services
RSM Australia Pty Ltd	Management, Business Professionals and Administrative Services
SCA Management Consultants Pty Ltd	Management, Business Professionals and Administrative Services
Systemix Pty Ltd	Management, Business Professionals and Administrative Services
Tracey Brunstrom & Hammond Pty Ltd	Management, Business Professionals and Administrative Services
TSA Management Pty Limited	Management, Business Professionals and Administrative Services
White & Case	Legal Services
WSP Australia Pty Limited	Building, Construction and Maintenance Services and Management, Business Professionals and Administrative Services
WTP Australia Pty Limited	Management, Business Professionals and Administrative Services